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Proclamation 10816 of September 20, 2024

The President

Asian American and Native American Pacific Islander-Serving Institutions Week, 2024

By the President of the United States of America

A Proclamation

Our Nation's nearly 200 Asian American and Native American Pacific Islander-Serving Institutions (AANAPISIs) open doors of opportunity for millions of Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) students. AANAPISIs provide a pathway to the middle class and a better life for their students, many of whom often come from low-income neighborhoods and may be the first in their families to attend college. During AANAPISI Week, we celebrate these critical institutions for the resources and support they provide to students, and we recommit to advancing their mission and success.

AANAPISIs play a critical role in the lives of so many of our Nation's AA and NHPI students. In addition to a quality education, these institutions meet AA and NHPI students where they are and foster inclusive learning environments—providing tutoring, career development, counseling, culturally and linguistically responsive services, and more. AANAPISIs confer more than half of all associate degrees and more than a third of baccalaureate degrees that AA and NHPI students earn.

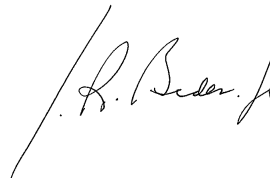
My Administration is committed to strengthening our AANAPISIs so that more AA and NHPI students can reach their full potential. My American Rescue Plan delivered \$5 billion to AANAPISIs. The Department of Education has invested in increasing the number of diverse and talented teachers by funding programs at Minority Serving Institutions that serve large percentages of AA and NHPI populations. Across my Administration, Federal agencies are working to expand the capacity of AANAPISIs and strengthen their programs. And I re-established the White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders and released a National Strategy to Advance Equity, Justice, and Opportunity for AA and NHPI Communities. These actions work to ensure AA and NHPI communities have the resources they need to thrive.

My Administration is also working to make college more affordable for all students. We provided a \$900 increase to the maximum Pell Grant award—the largest increase in over a decade, canceled debt for hundreds of thousands of borrowers through the Public Service Loan Forgiveness program, and taken steps to help borrowers manage their payments through income-driven repayment. And earlier this year, I laid out my Administration's new plans that would cancel student debt for more than 30 million Americans when combined with everything we have done so far.

I have always believed that the American Dream is big enough for everyone—and every generation has benefited by opening the doors of opportunity a bit wider for those behind them. During AANAPISI Week, may we celebrate the nearly 200 institutions across our Nation that ensure generations of AA and NHPI students can pursue the limits of their talents and ambitions. May we recognize that diversity will always be one of our Nation's greatest strengths. And may we celebrate all our Nation's AA and NHPI students.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 23 through September 29, 2024, as Asian American and Native American Pacific Islander-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth 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

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

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FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2024–22]

Use of Campaign Funds for Candidate and Officeholder Security

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission is amending its regulations regarding the use of campaign funds to pay for security measures for federal candidates, officeholders, and members of their family and staff. The Commission is adopting this rule to codify several Commission advisory opinions that authorize the use of campaign funds to pay for certain security measures and address additional issues raised in those advisory opinions.

DATES: The effective date is January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Robert M. Knop, Assistant General Counsel for Policy, Luis M. Lipchak, Attorney, or Joseph P. Wenzinger, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is amending its regulations at 11 CFR 113 to clarify that federal candidates and officeholders may use campaign funds to pay for security measures so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or officeholder. The Commission is amending its regulations consistent with prior advisory opinions that authorized such spending on certain security measures, including non-structural security devices; structural security devices; security personnel and services; and cybersecurity software, devices, and services. The Commission's

amendments to the regulations also address additional issues raised in prior advisory opinions.

Transmitting Final Rules to Congress

Before promulgating rules or regulations to carry out the provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”),¹ the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period.² The effective date of the final rule is January 1, 2025.

Explanation and Justification

I. Background

A. Act and Commission Regulations

The Act identifies six categories of permissible uses of contributions and donations accepted by a federal candidate, two of which are “ordinary and necessary expenses incurred in connection with the duties of the individual as a holder of Federal office,” and “any other lawful purpose not prohibited by 52 U.S.C. 30114(b).”³ Under 52 U.S.C. 30114(b), contributions accepted by a candidate may not be converted to “personal use” by any person.

The Act and Commission regulations define “personal use” as the use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office.”⁴ The Act and Commission regulations provide a non-exhaustive list of expenses that, when paid using campaign funds, constitute *per se* conversion of those funds to personal use.⁵ The Commission determines on a case-by-case basis whether the use of campaign funds to pay expenses other than those listed would be a prohibited conversion of the funds to personal use.⁶

The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from

campaign or officeholder activities, the Commission will not consider the use to be personal use.”⁷

B. Security Measures

Neither the Act nor Commission regulations identify the use of campaign funds to pay for the costs of security measures for federal candidates or officeholders as *per se* personal use. In numerous advisory opinions, however, the Commission has permitted the use of campaign funds to pay for various security measures for federal candidates or officeholders.

The Commission has issued several advisory opinions authorizing the use of campaign funds for certain home security upgrades to protect against threats to the physical safety of federal officeholders and their families.⁸ The facts presented in those advisory opinions indicated that the threats were motivated by the requestors' public roles as federal officeholders, candidates, or both. The Commission determined in each instance that the expenses for the proposed security upgrades would not have existed irrespective of the candidate's election campaign or the individual's duties as a federal officeholder.⁹ Therefore, the Commission concluded that the use of campaign funds to pay for the security

⁷ Personal Use of Campaign Funds, 60 FR 7862, 7867 (Feb. 9, 1995).

⁸ See Advisory Opinion 2022–02 (Steube) at 5 (approving use of campaign funds for the cost of a locking steel security gate at the federal officeholder's residence); Advisory Opinion 2020–06 (Escobar) at 2 (authorizing the use of campaign funds for security lighting and wiring at a federal officeholder's residence); Advisory Opinion 2011–17 (Giffords) at 3 (approving use of campaign funds for installing improved exterior lighting, improved locks, and a duress alarm button); Advisory Opinion 2011–05 (Terry) at 4 (approving use of campaign funds for installation of an exterior closed circuit television monitor); Advisory Opinion 2009–08 (Gallegly) at 4 (approving use of campaign funds for non-structural upgrades to home security system).

⁹ Additionally, in Advisory Opinion 2020–06 (Escobar), the Commission specified that the requested wiring and lighting costs “constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds.” Advisory Opinion 2020–06 (Escobar) at 4. Likewise, in Advisory Opinion 2022–02 (Steube), the Commission stated that the requested locking steel gate at the entrance to the property was a “necessary component” of a residential security system and the costs of which “constitute an integral part of an ordinary and necessary expense that may be paid with campaign funds.” Advisory Opinion 2022–02 (Steube) at 5.

¹ 52 U.S.C. 30101–45.

² *Id.* 30111(d).

³ 52 U.S.C. 30114(a); see also 11 CFR 113.2(a)–(e).

⁴ 52 U.S.C. 30114(b)(2); see also 11 CFR 113.1(g) (defining “personal use”).

⁵ See 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i).

⁶ See 11 CFR 113.1(g)(1)(ii) (providing non-exhaustive list of expenses to be determined for personal use on a case-by-case basis).

upgrades was permissible under the Act and Commission regulations.¹⁰

The Commission has also previously considered the implications of the heightened threat environment faced by Members of Congress collectively, necessitating increased residential security measures even if an individual Member has not received direct threats. For example, in Advisory Opinion 2017–07 (Sergeant at Arms), the Commission considered information from the House Sergeant at Arms about the threats faced by Members of Congress due to their status as federal officeholders and the recommendations of the Capitol Police that Members of Congress install or upgrade residential security systems to protect themselves and their families in response to those threats. In light of that information, the Commission concluded that certain costs of installing or upgrading home security systems in and around a Member's residence would constitute ordinary and necessary expenses incurred in connection with that Member's duties as a federal officeholder and that, therefore, Members of Congress may use campaign funds to pay reasonable costs associated with such home security systems.¹¹

In two advisory opinions, the Commission has also considered whether campaign funds may be used to pay for window security film as an authorized security enhancement in response to a heightened threat environment faced by federal officeholders. In Advisory Opinion 2022–05 (Crapo), the Commission considered whether campaign funds could be used to pay for a series of residential security enhancements recommended by the U.S. Capitol Police, including the installation of security film “on all accessible windows to prevent surreptitious observation into the residence.”¹² Similarly, in Advisory Opinion 2023–04 (Guy for Congress), the Commission considered whether campaign funds could be used to pay for the costs to purchase and install a security window film to protect a Member of Congress's home. The Commission determined in both instances that window security film, as a removeable security measure designed to mitigate potential threats stemming from the Members' duties as federal officeholders, falls within the category

of “non-structural security devices” for which campaign funds could be used, citing Advisory Opinion 2017–07 (Sergeant at Arms).¹³

The Commission also has permitted the use of campaign funds to pay for security measures beyond home security upgrades. In Advisory Opinion 2021–03 (NRSC *et al.*), the Commission authorized the use of campaign funds to pay for “bona fide, legitimate, professional personal security personnel” as ordinary and necessary expenses incurred in connection with an officeholder's duties.¹⁴ The Commission concluded that such expenses were permissible due to the threats arising from members' status as federal officeholders, including the heightened threat environment faced by Members of Congress collectively.¹⁵

Last, in two advisory opinions, the Commission authorized the use of campaign funds to pay for reasonable cybersecurity expenses as ordinary and necessary expenses incurred in connection with the requestors' duties as federal officeholders.¹⁶ In those opinions, the Commission also determined that the incidental benefit to others of cybersecurity measures, like the incidental benefit to others of home security measures to protect against physical harm, do not change the conclusion that such expenses are ordinary and necessary expenses incurred in connection with a federal officeholder's duties.¹⁷

C. Notice of Proposed Rulemaking

On April 9, 2024, the Commission published a Notice of Proposed Rulemaking (“NPRM”) in the **Federal Register** proposing to amend its regulations to authorize the use of campaign funds to pay for security measures to protect federal candidates and officeholders.¹⁸

The Commission's regulations at 11 CFR 113.1(g)(1) through (9) address the personal use of campaign funds. In the NPRM, the Commission proposed

adding a new paragraph (g)(10) to address the use of campaign funds for security measures.

Proposed paragraph (g)(10) provided that federal candidates and officeholders may use campaign funds to pay for the reasonable costs of security measures so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or officeholder.¹⁹

It included four subparagraphs as follows:

- New 11 CFR 113.1(g)(10)(i), to identify non-structural security devices as a category of security measures for which reasonable expenses would not be personal use and provide a non-exhaustive list of examples of non-structural security devices.
- New 11 CFR 113.1(g)(10)(ii), to identify structural security devices as a category of security measures for which reasonable expenses would not be personal use and include a non-exhaustive list of examples of structural security devices.
- New 11 CFR 113.1(g)(10)(iii), to identify security personnel and services as a category of security measures for which reasonable expenses would not be personal use.
- New 11 CFR 113.1(g)(10)(iv), to identify cybersecurity software, devices and services as a category of security measures for which reasonable expenses would not be personal use.

D. Public Comments on the NPRM

The Commission received 14 timely comments and two late comments in response to the NPRM. Seven comments were submitted by or on behalf of organizations, and nine were from individuals.

The comments universally supported the Commission's proposal to authorize the use of campaign funds to pay for certain security measures for federal candidates and officeholders and the Commission's proposal to include a non-exhaustive list of examples for which reasonable expenses would not be deemed personal use.²⁰ Commenters agreed with the Commission's rationale that federal candidates and officeholders should be able to spend campaign funds for security measures given the safety and security threats that are faced by individuals running campaigns and holding federal office. And commenters broadly cited the

¹³ Advisory Opinion 2022–05 (Crapo) at 5; Advisory Opinion 2023–04 (Guy for Congress) at 4.

¹⁴ *Id.*

¹⁵ *See id.* at 3.

¹⁶ *See* Advisory Opinion 2018–15 (Wyden) at 4 (permitting use of campaign funds for cybersecurity expenses including hardware, software, consulting services, and emergency assistance); Advisory Opinion 2022–17 (Warren) at 5 (approving use of campaign funds for the incremental costs of professionally managed cybersecurity services for ongoing network monitoring, patch management, backup management, and remote incident remediation).

¹⁷ *See* Advisory Opinion 2022–17 (Warren) at 5.

¹⁸ Candidate Salary, Notice of Proposed Rulemaking (“NPRM”), 89 FR 24738 (April 9, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425136>.

¹⁰ *See* Advisory Opinion 2022–02 (Steube) at 5; Advisory Opinion 2020–06 (Escobar) at 2; Advisory Opinion 2011–17 (Giffords) at 3; Advisory Opinion 2011–05 (Terry) at 4; Advisory Opinion 2009–08 (Gallegly) at 4.

¹¹ Advisory Opinion 2017–07 (Sergeant at Arms) at 3.

¹² Advisory Opinion 2022–05 (Crapo) at 3.

¹⁹ New paragraph (g)(10) also requires disbursements for security measures to be for the usual and normal charge and explains the meaning of usual and normal charge.

²⁰ Three comments received from individuals were not responsive to the NPRM.

threats faced by candidates and officeholders and referred to specific incidents of threats and harassment that have occurred involving candidates and officeholders at the local, state, and federal levels.

Although the comments broadly supported the Commission's proposal, some raised concerns, particularly regarding the risks of improper use of campaign funds under the pretext of security spending, such as for security services that may not be bona fide, legitimate, and professional, as discussed further below. Commenters also suggested two additions to the proposed rule, most notably (1) to allow campaign funds to be used to pay for security expenses for the staff and family of candidates and officeholders in addition to the candidates and officeholders themselves, and (2) to clarify that any security services used by the federal candidate or officeholder must be bona fide, legitimate, and professional. The Commission agrees with these commenters and, accordingly, adopts the proposed rule with these two additions, as discussed below.

II. Revised 11 CFR Part 113.1—Definitions

After reviewing public comments received in response to the NPRM, the Commission is amending its regulations regarding the use of campaign funds to allow the use of campaign funds to pay for certain security measures for candidates, officeholders, members of their family, and employees—as the term is defined at 26 CFR 31.3401 (c)—1—of the campaign or office (hereinafter also referred to as “staff”). The Commission has long recognized that if a candidate “can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use.”²¹ Consistent with this rationale and prior advisory opinions that have authorized the use of campaign funds to pay for security measures, the Commission is amending the regulatory definition of personal use to clarify that campaign funds may be spent on certain security measures.

As proposed in the NPRM, the Commission is adding a new paragraph at 11 CFR 113.1(g)(10) to address the use of campaign funds for security measures. Paragraph (g)(10) states the basic rule and personal use standard. Subparagraphs (g)(10)(i) through (iv) provide a non-exhaustive list of examples that would not be deemed personal use.

A. New 11 CFR 113.1(g)(10)—Candidate and Federal Officeholder Security

The Commission is adopting paragraph (g)(10) as proposed, with the exception that the final rule will also cover family members and staff of candidates and officeholders. Accordingly, the Commission's new regulation provides that the use of campaign funds to pay for the reasonable costs of security measures for a federal candidate or officeholder or their family and staff is not personal use, so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or officeholder. The new regulation also requires that the payment for security measures be made at the usual and normal charge for such goods or services.²²

Reasonable Costs

In the NPRM, the Commission proposed to limit the use of campaign funds for security measures to cover only the “reasonable costs” of such security measures.

The Commission received five comments on the proposed “reasonable cost” standard, four of which supported the proposal and one that opposed it. One of the commenters supporting the proposal urged the Commission to issue guidance or factors to consider in determining reasonableness of security expenses. This commenter suggested that the Commission take into account several factors in determining whether a security expense is reasonable, including: (1) the nature of the specific threat environment faced by the candidate or officeholder, (2) the cost of the security measure and how commonly it is used, (3) whether the security measure was recommended as part of a qualified security assessment, (4) whether the candidate or officeholder (or a member of their immediate family or staff) is a vulnerable person, and (5) whether the candidate's or officeholder's personally identifiable information is publicly available.²³

Another commenter suggested that a “tailoring requirement” should be added, *i.e.*, candidates and officeholders

should only be permitted to spend campaign funds on security measures that are “reasonably tailored to addressing ongoing dangers or threats.”²⁴ In the commenter's view, the tailoring requirement would prevent abuse of campaign funds and ensure that they are used in both a reasonable and limited manner.²⁵

The commenter opposing the reasonableness standard viewed it as unnecessary. This commenter asserted that the irrespective test in the personal use regulations should be used to determine whether a security expense is permissible rather than adopting a new reasonableness standard.

The Commission agrees with the comments that support the use of the reasonable cost standard in the proposed rule. The Commission finds that the reasonable cost standard is a fair standard that provides appropriate notice to candidates, officeholders, and the public at large, and that the standard strikes the appropriate balance between granting candidates and officeholders the authority to use campaign funds for security needs while limiting such authority to prevent the misuse of campaign funds in the name of security. Therefore, the Commission adopts the rule as proposed in the NPRM, which authorizes the use of campaign funds for reasonable costs.

Candidates and Officeholders

As proposed in the NPRM, the rule would authorize the use of campaign funds to pay for certain security expenses for both candidates and federal officeholders so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder.

The Commission sought comment on whether any distinction should be made between federal candidates and officeholders in how campaign funds may be used to pay for security measures. Most of the commenters agreed that the rule should authorize the use of campaign funds for security expenses for both candidates and officeholders, and none suggested that a distinction should be made between the two.

The Commission agrees. As is well documented in the comments and in prior advisory opinions discussed above, both federal candidates and officeholders face safety and security

²² The new regulation defines “usual and normal charge” as, in the case of goods, the price of those goods in the market in which they are ordinarily purchased and, in the case of services, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services are rendered. *See also* 11 CFR 100.52(d)(2) (defining “usual and normal charge” generally).

²³ Brennan Center for Justice, Comment at 11–12 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425200>.

²⁴ Campaign Legal Center, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425201>.

²⁵ *Id.*

threats due to running campaigns or holding federal office. Accordingly, the Commission adopts the proposed rule authorizing the use of campaign funds for certain security measures by both candidates and officeholders.

Ongoing Dangers or Threats

As proposed in the NPRM, the new regulation would only permit the use of campaign funds to pay for security measures that address *ongoing dangers or threats* that would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder.

Most of the commenters generally supported the proposed rule without commenting on the ongoing dangers or threats limitation. Several commenters, however, questioned whether the *ongoing dangers or threats* language was appropriate. One commenter recommended expanding the rule to include "reasonably likely future threats or dangers, or past threats or dangers that may reoccur."²⁶ Another commenter expressed concern that the proposed rule was too restrictive and recommended that the rule take into account the threat environment at the national, state, or local level, rather than just the circumstances of the individual.²⁷

Another commenter suggested that the proposed rule should focus on whether the expense for the security measure would exist irrespective of the individual's status or duties as a candidate or officeholder rather than requiring any specific danger or threat.

Two commenters argued that the rule should not require a showing of heightened threat environment for candidates and officeholders to spend campaign funds on security measures. One of the commenters specifically opposed requiring that a heightened threat environment be demonstrated prior to spending on security measures. The other commenter explained that many security measures are reasonable under any conditions and should be treated as ordinary and necessary expenses, while the nature of any threat environment should be a consideration in the reasonableness test in the proposed rule language.

The Commission agrees with the comments that supported adopting the proposed rule and does not find the need to change the "ongoing dangers or

threats" limitation. The Commission determines that the proposed rule as drafted appropriately encompasses the scope of dangers or threats faced by candidates and officeholders while establishing a limit to prevent the abuse and personal use of campaign funds. The Commission also agrees that a showing of a heightened threat environment should not be required prior to spending of campaign funds on security measures. Therefore, the Commission adopts the rule as proposed in the NPRM regarding ongoing dangers or threats.

Family and Staff Security Measures

In the NPRM, the Commission's proposed rule did not explicitly provide for the use of campaign funds for security measures for family members or staff of federal candidates and officeholders. The Commission, however, sought comment on whether the proposed rule should be expanded to cover family members and staff.

Most of the commenters generally supported adopting the proposed rule without commenting on whether family members and staff should be explicitly covered. Four comments specifically supported it, while none opposed it. Various commenters cited to media coverage of incidents of threats and violence faced by the family members and staff of candidates and officeholders, including the attack on the husband of former House Speaker Nancy Pelosi and a death threat received by a Congressional staff member.²⁸ One of the comments supporting the inclusion of family members and staff argued that such expenses should be specifically included because the need for the security expenses for family members and staff would not exist irrespective of the status of the individual as a candidate or officeholder. One comment suggested that the final rule should specify that "family" may include family members who do not reside with the candidate or officeholder; another comment recommended covering, at a minimum, the immediate family members who reside with the officeholder or candidate.

The Commission agrees that the proposed rule should be extended to permit the use of campaign funds for security measures for the family and staff of candidates and officeholders, in addition to the candidates and

officeholders themselves. The Commission acknowledges the concerns raised by the commenters that the safety and security threats faced by candidates and officeholders may also extend to their families and staff, and in prior advisory opinions the Commission has authorized the use of campaign funds to address such security concerns.²⁹ The Commission also agrees that, as with threats to candidates and officeholders themselves, in such cases, those threats to family members and staff would not exist irrespective of the individual's status or duties as a federal candidate or federal officeholder.

The Commission therefore amends the proposed rule to permit the use of campaign funds for reasonable security measures to address ongoing dangers or threats to candidates and officeholders as well as members of the candidate or officeholder's family and staff. The Commission emphasizes that, as with candidates and officeholders, a security expense for a member of the candidate or officeholder's family or staff must satisfy the irrespective test, meaning that expenditures on such security measures could only be made if the threats to the family member or staff did not exist irrespective of the individual's status or duties as a candidate or officeholder.

Regarding the scope of the term "family member," for purposes of this provision, the Commission will use the existing definition of "members of the candidate's family" in 11 CFR 113.1(g)(8). For this section, the term "employee" is used as defined at 26 CFR 31.3401(c)-1, as that is a well-recognized definition used elsewhere in Commission regulations, such as in 11 CFR part 114. This definition generally does not include campaign volunteers.³⁰ However, candidates or officeholders

²⁹ See Advisory Opinion 2021-03 (NRSC *et al.*) at 2 (concluding that Members of Congress may use campaign funds to pay for bona fide, legitimate, professional personal security personnel to protect themselves and their immediate families due to threats arising from their status as officeholders); Advisory Opinion 2022-17 (Warren) at 5 (concluding that candidate and officeholder may use campaign funds for cybersecurity measures to protect her home network, notwithstanding that family members and visitors may also connect their personal devices to candidate's home network, so long as any benefit to others are incidental).

³⁰ The Commission has previously stated that the fact that individuals other than the intended protectee will benefit from a security measure does not preclude the Commission from determining that the use of campaign funds for such security measure is not personal use. See Advisory Opinion 2022-17 (Warren Democrats, Inc.) at 5 (concluding that authorized committee may use campaign funds to pay for costs of reasonable cybersecurity measures to protect officeholder's home network, even though the benefits of such measures would necessarily extend to other members of the household and visitors to the home).

²⁶ Democratic Senatorial Campaign Committee and Democratic Congressional Campaign Committee, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425203>.

²⁷ Brennan Center for Justice, Comment at 12 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425200>.

²⁸ See Campaign Legal Center, Comment at 3 (June 10, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425201>; Citizens for Responsibility & Ethics in Washington, Comment at 2 (June 5, 2024), <https://sers.fec.gov/fosers/showpdf.htm?docid=425202>.

may request advisory opinions in circumstances where they seek to use campaign funds for such security measures.

In sum, the Commission adopts the new rule as amended to permit the use of campaign funds to pay for security measures for federal candidates, officeholders, and their family and staff.

Law Enforcement Requirement

The proposed rule did not require law enforcement involvement or assessment in permitting the use of campaign funds to pay for security measures for federal candidates and officeholders. However, the Commission sought comment on whether such a law enforcement requirement would be appropriate.

Most of the comments generally supported adopting the proposed rule without specifically commenting on whether law enforcement threat assessments should be required. Although various comments acknowledged that law enforcement assessments may play a useful role in demonstrating the existence of threats to candidates and officeholders, three comments opposed requiring them. One comment recommended that a police report be required if the campaign wished to spend above a certain limit established by the Commission. Another comment explained that although law enforcement assessment of a candidate or officeholder's circumstances and any security recommendations will be relevant to the determination of whether security expenses are reasonable, as was the case in prior Commission advisory opinions, the Commission never suggested that a law enforcement threat assessment was required to permit spending of campaign funds on security expenses.

After considering the arguments for and against requiring law enforcement threat assessments, the Commission has decided not to impose such a requirement in the final rule. As many commenters have noted, law enforcement threat assessments may play a useful role in determining whether a particular security measure is reasonable, and the Commission encourages candidates and officeholders to obtain such assessments when possible. However, imposing such a requirement in the regulation would be too restrictive, as it would deny the use of campaign funds for security measures in the absence of a law enforcement threat assessment even when an actual threat is genuine. Accordingly, the Commission adopts the rule as proposed in the NPRM, which does not require candidates or officeholders to obtain a law enforcement threat assessment to

spend campaign funds on security measures.

Other Issues Raised by Comments

In the NPRM, the proposed rule did not address the ownership of tangible security devices, such as security cameras installed on a candidate's property. One comment argued that the final rule should treat security devices purchased with campaign funds as the property of the candidate's principal campaign committee, citing to Advisory Opinion 1994–20 (Charlie Rose). The comment asserted that tangible security items should remain the campaign's property and be sold at fair market value or otherwise disposed of when the campaign winds down. The Commission disagrees with this comment because the ownership of tangible goods including those purchased for security measures remain subject to other provisions of the Act and Commission regulations, including prior advisory opinions that have treated non-cash assets as excess campaign funds. Accordingly, the Commission adopts the proposed rule without the amendment to address the ownership of tangible goods.

Several commenters urged the Commission to ensure campaign funds for security measures are not used for personal enrichment, especially when security measures or services are provided by candidates' family members. The Commission agrees with these comments that raised concerns about personal enrichment and potential abuse of campaign funds but finds that the proposed rule language, along with the other provisions of the Act and regulations, sufficiently addresses these concerns. The Commission therefore adopts the rule language as proposed.

Finally, one comment urged the Commission to explicitly acknowledge that even if campaign funds may be used for security expenses, campaigns are not required to pay for security expenses at the homes of candidates, officeholders, or their families, and such expenses can be paid for by candidates, officeholders, or their family members. The Commission declines to adopt this recommendation because it views it as unnecessary.

B. New 11 CFR 113.1(g)(10)(i)—Non-Structural Security Devices

In the NPRM, the Commission proposed to treat non-structural security devices as a permissible category of security measures that candidates and officeholders could pay for using campaign funds. As proposed, 11 CFR 113.1(g)(10)(i) also provides several

examples of permissible non-structural security devices, namely security hardware, locks, alarm systems, motion detectors, and security cameras.

Commenters generally supported adopting this provision. One comment, however, suggested adding “security training” to the list of examples of permissible non-structural security devices.

The Commission declines to do so. As acknowledged by the commenter, “training” is not a security measure that would generally be categorized as a device. Accordingly, consistent with the comments that support adopting the proposed rule, the Commission is adopting new 11 CFR 113.1(g)(10)(i) as proposed in the NPRM.

C. New 11 CFR 113.1(g)(10)(ii)—Structural Security Devices

In the NPRM, the Commission proposed to treat structural security devices as permissible security measures that candidates and officeholders may pay for with campaign funds. The proposed subparagraph also listed several examples of permissible structural security devices, including wiring, lighting, gates, doors, and fencing. The proposed rule, however, required such devices to be “intended solely to provide security and not to improve the property or increase its value.”

The commenters generally supported adopting this provision. One comment recommended that the rule not require structural security devices to be intended “solely” to provide security. Another comment recommended allowing structural security devices at locations such as campaign headquarters, event spaces, and residences of staff and family members who received threats arising from their connection with the candidate or officeholder and not limiting the permissible use of such security devices to the candidate or officeholder's residence. This comment also recommended clarifying that incidental increases in value to a property from structural security devices do not necessarily make the use of campaign funds an impermissible personal use. However, the comment noted that additional costs for features or aesthetic options that do not serve a security purpose should not be permissible expenses to be paid using campaign funds.

The Commission declines to adopt a rule that would allow the installation of structural security devices for reasons other than security. In the Commission's view, the proposed rule appropriately restricts expenses to those that are

solely intended to provide security. Expenses for structural security devices incurred for purposes other than security, such as to improve the property or increase property values, do not fall within the authority of this rule and may constitute the prohibited personal use of campaign funds. However, the Commission agrees that, as noted by another commenter, incidental increases in property value due to the installation of a device solely intended to provide security would be permissible. After considering all of the comments, the Commission is adopting new 11 CFR 113.1(g)(10)(ii) as proposed in the NPRM.

D. New 11 CFR 113.1(g)(10)(iii)—Security Personnel and Services

In the NPRM, the Commission proposed to treat professional security personnel and services as a category of security measures for which candidates and officeholders may use campaign funds.

The Commission received several comments on this proposed rule. One comment urged the Commission to provide strict guidance as to who constitutes professional security personnel under the proposed rule so that private militias would not be hired in the guise of security measures. Another comment recommended that the professional security personnel and services be limited to only bona fide, legitimate, professional security personnel as articulated in Advisory Opinion 2021–03 (NRSC, et. al). Two comments argued that security personnel paid for with campaign funds must be licensed by a government entity and be up to date on all required certifications to prevent untrained personnel from providing candidate and officeholder security. Two other comments stated that spending on professional security personnel should not be limited to candidates or officeholders who are not otherwise protected by law enforcement or federal agents. And one comment would require security firms to have no connection with candidates or their staff to avoid unjust enrichment by them.

The Commission agrees that additional guidance would be helpful in determining what are permissible security personnel and services under this rule. As identified by one of the commenters, limiting the rule to security personnel and services that are bona fide, legitimate, and professional would be consistent with the limitation the Commission previously approved in Advisory Opinion 2021–03 (NRSC, et. al). Adopting this proposed limitation would also address various concerns

raised by commenters regarding the hiring of private militias, use of untrained personnel, and unjust enrichment under the pretext of security expenses. Therefore, the Commission adopts the proposed rule language as amended to require security personnel and services be bona fide, legitimate, and professional.

E. New 11 CFR 113.1(g)(10)(iv)—Cybersecurity Software, Devices, and Services

In the NPRM, the Commission proposed to treat cybersecurity software, devices, and services as a category of security expenses for which candidates and officeholders may use campaign funds.

The comments received in response to the NPRM generally agreed with treating cybersecurity protection measures as a permissible type of security measure in the new rule. One comment specifically expressed support for identifying cybersecurity measures in the new rule. None of the comments received opposed including cybersecurity measures in the new rule. Accordingly, the Commission adopts new 11 CFR 113.1(g)(10)(iv) as proposed in the NPRM.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would provide flexibility to principal campaign committees that choose to use campaign funds to pay for security measures for federal candidates or officeholders. Any proposed rule that could be construed as placing an obligation on a principal campaign committee would apply only to campaigns that choose to pay for security measures for federal candidates or officeholders. The proposed rule would not impose any new recordkeeping, reporting, or financial obligations on principal campaign committees that do not choose to pay for security measures for federal candidates or officeholders, and any such new obligations that may be imposed on principal campaign committees that do choose to pay for such security measures would be minimal. Thus, to the extent that any entities affected by this proposed rule might fall within the definition of “small businesses” or “small organizations,” the economic impact of complying with this rule would not be significant.

List of Subjects in 11 CFR Part 113

Campaign funds.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR part 113 as follows:

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN FUNDS

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

■ 2. Amend § 113.1 by adding paragraph (g)(10) to read as follows:

§ 113.1 Definitions (52 U.S.C. 30114).

* * * * *

(g) * * *
(10) *Candidate and federal officeholder security.* The use of campaign funds to pay for the reasonable costs of security measures for a federal candidate, federal officeholder, member of their family, and employees—as defined in 26 CFR 31.3401(c)–1—of the candidate’s campaign or the federal officeholder’s office, is not personal use, so long as the security measures address ongoing dangers or threats that would not exist irrespective of the individual’s status or duties as a federal candidate or federal officeholder. Disbursements for security measures must be for the usual and normal charge for such goods or services. *Usual and normal charge* means, in the case of goods, the price of those goods in the market in which they are ordinarily purchased, and, in the case of services, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. Examples of such security measures include, but are not limited to:

(i) Non-structural security devices, such as security hardware, locks, alarm systems, motion detectors, and security camera systems;

(ii) Structural security devices, such as wiring, lighting, gates, doors, and fencing, so long as such devices are intended solely to provide security and not to improve the property or increase its value;

(iii) Security personnel and services that are bona fide, legitimate, and professional; and

(iv) Cybersecurity software, devices, and services.

Dated: September 19, 2024.

On behalf of the Commission,

Sean J. Cooksey,
Chairman, Federal Election Commission.

[FR Doc. 2024–21918 Filed 9–24–24; 8:45 am]

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DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 5****[Docket ID OCC–2023–0017]****RIN 1557–AF24****Business Combinations Under the Bank Merger Act****AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.**ACTION:** Final rule.

SUMMARY: The OCC is adopting a final rule to amend its procedures for reviewing applications under the Bank Merger Act and adding, as an appendix, a policy statement that summarizes the principles the OCC uses when it reviews proposed bank merger transactions under the Bank Merger Act.

DATES: The final rule is effective on January 1, 2025.

FOR FURTHER INFORMATION CONTACT:

Valerie Song, Assistant Director, Christopher Crawford, Special Counsel, Elizabeth Small, Counsel, Chief Counsel's Office, 202–649–5490; or Yoo Jin Na, Director for Licensing Activities, 202–649–6260, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:**I. Background**

The Bank Merger Act (BMA), section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), and the OCC's implementing regulation, 12 CFR 5.33, govern the OCC's review of business combinations of national banks and Federal savings associations with other insured depository institutions (institutions) that result in a national bank or Federal savings association.¹ Under the BMA, the OCC must consider the following factors: competition, the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, the risk to the stability of the United States banking or financial system, and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas

branches.² The BMA generally requires public notice of the transaction to be published for 30 days.³ OCC regulations require the public notice include essential details about the transaction and instructions for public comment. The regulations incorporate the statutory 30-day public notice period and provide a 30-day public comment period, which the OCC may extend.⁴ The OCC may also hold a public hearing, public meeting, or private meeting on an application.⁵

The OCC has issued several publications that provide additional information about the procedures that the OCC follows in reviewing and acting on proposed business combinations. For example, the "Business Combinations" booklet of the *Comptroller's Licensing Manual* details the OCC's review of applications under the BMA. The "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual* sets forth policies related to the public notice and comment process, including hearings and meetings. The *Comptroller's Licensing Manual* provides OCC staff, institutions, and the public with information about the procedures applicable to corporate applications filed with the OCC.

After reviewing these materials, the OCC determined that additional transparency about the standards and procedures that the agency applies when reviewing bank business combinations may be helpful to institutions and the public.

To better reflect the OCC's view that a business combination is a significant corporate transaction, the OCC proposed amendments to 12 CFR 5.33 to remove provisions related to expedited review and the use of streamlined applications.⁶ The OCC also proposed adding a policy statement at appendix A to 12 CFR part 5, subpart C, that would discuss both the general principles the agency uses to review applications under the BMA and how it considers financial stability, financial and managerial resources and future prospects, and convenience and needs factors. Proposed appendix A also described the criteria informing the OCC's decision on whether to hold a public meeting on an application subject to the BMA.

The OCC received 34 substantive written comments on this proposal from banks, trade groups, academics, and members of the public. Most

commenters agreed that the OCC should update its merger regulations and guidelines, but expressed varying views on the proposed changes. The comments are addressed below with the relevant discussion of 12 CFR 5.33 and appendix A. After careful consideration of these comments, the OCC is adopting its proposed amendments to 12 CFR 5.33 in final form and making minor, clarifying modifications to proposed appendix A.

II. Description of the Final Policy Statement and Regulatory Amendments*Regulatory Amendments*

The OCC proposed two substantive changes to its business combination regulation at 12 CFR 5.33. First, the OCC proposed removing the expedited review procedures in § 5.33(i). Paragraph (i) currently provides that a filing that qualifies either as a business reorganization as defined in § 5.33(d)(3) or for a streamlined application under § 5.33(j) is deemed approved as of the 15th day after the close of the comment period, unless the OCC notifies the applicant that the filing is not eligible for expedited review or the expedited review process is extended under § 5.13(a)(2).⁷

Some commenters opposed eliminating the expedited review procedures. These commenters argued that eliminating the expedited review procedures would unnecessarily increase the complexity and cost of the application process for categories of transactions that are unlikely to present issues under the BMA, such as reorganizations. Further, many commenters expressed concern that removing § 5.33(i) would increase the burden on smaller institutions, including community banks. Some of these commenters suggested that the OCC continue to allow expedited processing for banks under a certain size. Other commenters supported eliminating expedited review, stating that eliminating the possibility that an application will be deemed approved solely due to the passage of time is necessary to address the systemic risks posed by large banks and the harms of consolidation. Further, some commenters that supported eliminating expedited review noted that the current expedited review process fails to adequately prevent anti-competitive mergers and the proposed changes to the review process would allow for a

² 12 U.S.C. 1828(c)(5), (11).

³ 12 U.S.C. 1828(c)(4).

⁴ 12 CFR 5.8(b), 5.10(b)(1).

⁵ 12 CFR 5.11.

⁶ 89 FR 10010 (February 13, 2024).

⁷ Under the proposal, the provisions in 12 CFR 5.13(a)(2) regarding adverse comments would no longer apply to business combination applications because they only apply to filings that qualify for expedited review.

¹ A business combination for these purposes includes an assumption of deposits in addition to a merger or consolidation.

more comprehensive evaluation of merger application. Nevertheless, some supportive commenters noted that the proposed changes, including the removal of expedited review, do not go far enough to effectively address the issues raised by large bank consolidations.

The OCC reviews business combination applications to determine whether applicable procedural⁸ and substantive⁹ requirements are met. The only benefit conferred by the expedited review provisions in § 5.33(i) is that these applications are deemed approved as of the 15th day after the close of the comment period¹⁰ unless the OCC takes action to remove the application from expedited review or extends the expedited review process. As described in the OCC's Annual Report, Licensing Activity section, the OCC's current target time frame for licensing decisions on merger applications is 45 days for expedited review and 60 days for standard review.¹¹ However, as noted in § 5.33(i), the OCC can remove an application from expedited review. Additionally, as noted in the OCC's Annual Report, the OCC may extend the standard review target time frame if it needs additional information to reach a decision, process a group of related filings as a single transaction, or extend the public comment period. The OCC's practice has been to approve or deny an application on expedited review within 15 days after the close of the comment period or remove the application from expedited review. The OCC is not aware of any application for a business combination having been deemed approved solely due to the passage of time. Accordingly, the OCC does not expect that removing this provision will result in a significant change to the time in which the OCC processes merger applications. Instead, this change will more closely align the regulatory framework with the OCC's current practices and promote transparency. Further, it is consistent with the OCC's view that any business combination subject to a filing under § 5.33 is a significant corporate transaction requiring active OCC consideration and decisioning of the application. The principles underlying the expedited process in § 5.33(i) (*i.e.*, transactions with certain indicators are likely to satisfy the statutory factors, do not otherwise raise supervisory or

regulatory concerns, and therefore can be processed more expeditiously) are reflected in section II of the final appendix A.

Second, the OCC proposed removing § 5.33(j), which specifies four situations in which an applicant may use the OCC's streamlined business combination application, rather than the Interagency Bank Merger Act Application.¹² The streamlined application requests information about topics similar to those addressed in Interagency Bank Merger Act Application, but the former only requires an applicant to provide detailed information if the applicant answers in the affirmative to any one of a series of yes or no questions.

Many commenters opposed eliminating the streamlined application. Commenters stated that it is easy to complete and generally more efficient. Commenters stated that its removal would lead to longer processing times and higher costs for applicants. Several

¹² 12 CFR 5.33(j) authorizes the use of a streamlined application if: (i) At least one party to the transaction is an eligible bank or eligible savings association, and all other parties to the transaction are eligible banks, eligible savings associations, or eligible depository institutions, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank or Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; (ii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting national bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application; (iii) The acquiring bank or Federal savings association is an eligible bank or eligible savings association, the target bank or savings association is not an eligible bank, eligible savings association, or an eligible depository institution, the resulting bank or resulting Federal savings association will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank or acquiring Federal savings association, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application; or (iv) In the case of a transaction under 12 CFR 5.33(g)(4), the acquiring bank is an eligible bank, the resulting national bank will be well capitalized immediately following consummation of the transaction, the filers in a prefiling communication request and obtain approval from the appropriate OCC licensing office to use the streamlined application, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in the bank's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application.

commenters emphasized that eliminating the streamlined application would disproportionately affect smaller banks, which often have limited resources to devote to a more complex, administratively burdensome, and detailed application process. Commenters critical of eliminating the streamlined application focused on the increased burden of associated with the Interagency Bank Merger Act Application. On the other hand, some commenters supported removing the streamlined application, with one also supporting the adoption of a more robust interagency merger application that would include a question on community benefit agreements or commitments.

The OCC believes that the more complete record created with the Interagency Bank Merger Act Application provides the appropriate basis for the OCC to consider a business combination application. Further, the removal of the streamlined business combination form should not significantly increase the burden on applicants. Although the Interagency Bank Merger Act Application requires the submission of additional information with the initial application, in practice, the OCC often requests additional information from many applicants, including those that file a streamlined application. Eliminating the streamlined application may decrease the likelihood the OCC requests additional information from applicants, which slows down the agency's processing an application and increases the burden on applicants. Further, the OCC may tailor the information applicants must submit in the Interagency Bank Merger Act Application as appropriate to reduce the information that the applicant needs to provide.¹³ For example, there may be situations where a discussion of all items in the Interagency Bank Merger Act Application may not be appropriate, such as in a purchase and assumption transaction from an insured depository institution in Federal Deposit Insurance Corporation receivership.

Additionally, the U.S. Small Business Administration's (SBA's) Office of Advocacy and one other commenter stated that the OCC's Regulatory

¹³ Under 12 CFR 5.2(b), the OCC may adopt materially different procedures for a particular filing or class of filings as it deems necessary (*e.g.*, in exceptional circumstances or for unusual transactions) after providing notice of the change to the filer and any other party that the OCC determines appropriate. For example, the OCC may use this authority, if appropriate, to reduce the information it requires in a transaction involving a failing bank, given the limited time available to prepare the application.

⁸ See, *e.g.*, 12 U.S.C. 215a (procedures for mergers resulting in a national bank).

⁹ See, *e.g.*, 12 U.S.C. 1828(c) (BMA).

¹⁰ The public comment period is typically 30 days. See 12 CFR 5.10(b)(1).

¹¹ See, *e.g.*, Office of the Comptroller of the Currency, 2023 Annual Report, at 36.

Flexibility Act (RFA) certification in the proposal lacked a factual basis. The SBA's Office of Advocacy and others recommended that the OCC continue to allow small entities to have access to expedited review and use the streamlined application form.

Specifically with respect to the RFA certification, the commenters stated it lacked sufficient information about (1) the number of small entities that would be impacted (because the OCC only estimated the number of entities that apply for business combinations in a given year and did not explain how many of those entities were small entities) and (2) the basis for its conclusion that the impact on affected institutions would be *de minimis*.

In response to these comments, the OCC has revised the number of small entities that will be impacted by this rulemaking. (This change is reflected in its discussion of the RFA below.) Further, as discussed above, the OCC's process for reviewing business combination applications allows the agency to vary the information that applicants must submit on a case-by-case basis and to request additional information not required on the initial application, if necessary. The OCC also may remove an application from expedited review if it needs additional review time. Accordingly, the OCC expects these changes will have a *de minimis* impact on small entities.

For the reasons discussed above, the final rule removes § 5.33(i) and (j) as proposed. Further, because the term "business reorganization," as defined in § 5.33(d)(3), is only used to define a class of applications eligible for expedited review under § 5.33(i), the final rule also removes § 5.33(d)(3).

Policy Statement

As discussed in Section I, *Introduction*, of proposed appendix A, the policy statement would have provided institutions and the public with a better understanding of how the OCC reviews applications subject to the BMA and thus provided greater transparency, facilitate interagency coordination, and enhance public engagement. Specifically, proposed appendix A would have outlined the general principles the OCC applies when reviewing applications and provided information about how the OCC considers the BMA statutory factors of financial stability, financial and managerial resources, and convenience and needs of the community.¹⁴ Proposed appendix A

would have provided transparency regarding the public comment period and the factors the OCC considers in determining whether to hold public meetings.

Commenters generally supported the OCC's goals of increasing transparency; however, some commenters stated that by merely codifying current practices, the proposed appendix A did not go far enough in fulfilling the OCC's statutory obligations in reviewing bank mergers or preventing anti-competitive mergers in the banking industry. Several commenters also urged the OCC to coordinate closely with other regulators, such as the Federal Deposit Insurance Corporation, in finalizing the proposed policy statement and in updating the 1995 interagency document, *Bank Merger Competitive Review—Introduction and Overview*.

Other commenters suggested that appendix A should address the uncertainty surrounding the processing considerations and timelines of the OCC's review of BMA applications, noting that uncertainty in the timelines for regulatory approval could deter beneficial merger transactions. Several commenters offered additional ways to increase transparency, including by releasing some of the confidential supervisory information (e.g., ratings) that the OCC uses in evaluating the statutory factors, televising live coverage of internal OCC deliberations, making all agency requests for additional information and bank responses public, and responding to all comments raised by the public in merger approval orders.

Several commenters suggested topics that the OCC should add to proposed appendix A. For example, several commenters suggested appendix A should provide details of the OCC's analysis of the BMA statutory factor of competition, generally and particularly with regard to how improvements in convenience and needs can outweigh anticompetitive effects. These commenters provided several suggested approaches. Other commenters urged the OCC to be more transparent when an applicant withdraws an application. One commenter also suggested the OCC take steps to reduce "charter shopping." Another commenter urged the OCC to avoid the use of non-standard conditions to approve problematic mergers. Some commenters expressed concerns with the OCC's practice of holding pre-filing meetings described in the *Explanatory Calls or Meetings*

and the effectiveness of any insured depository institution involved in combatting money laundering activities, including in overseas branches. 12 U.S.C. 1828(c)(5), (11).

section of the "Business Combinations" booklet of the *Comptroller's Licensing Manual* and were concerned that such communications could unduly influence the agency. Suggestions to resolve this issue included automatically making transcripts or summaries of the calls or meetings public or ending the practice of holding the meetings.

The OCC is finalizing appendix A generally as proposed, with minor grammatical changes, except as noted below. The OCC intends for appendix A to provide substantive information on how it evaluates many of the BMA's statutory factors. Given complexities of the competition factor review and the involvement of the Department of Justice, the OCC does not believe that appendix A is the appropriate vehicle for discussing its current approach to competition issues.¹⁵ The OCC's existing regulations govern the standards for impositions of conditions.¹⁶ Similarly, the OCC does not intend appendix A to address OCC processing issues such as the disclosure of confidential supervisory information, the reasons for withdrawal of applications, its internal decision-making process, or its practice of holding pre-filing meetings. Accordingly, the OCC is finalizing Section I, *Introduction*, as proposed, with minor grammatical changes.

Section II, *General Principles of OCC Review*, of proposed appendix A would have discussed the OCC's review of and action on an application. Although, the OCC aims to act promptly on all applications, proposed appendix A identified certain indicators that, in the OCC's experience, generally feature in applications that are consistent with approval. These indicators included: (i) attributes regarding the acquirer's

¹⁵ The OCC notes that the convenience and needs analysis is relevant to the competition analysis in some instances. Under 12 U.S.C. 1828(c)(5)(B), the OCC may approve a merger whose effect in any section of the country may be substantially to lessen competition or to tend to create a monopoly, or which in any other manner would be in restraint of trade if it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

¹⁶ 12 CFR 5.13(a)(1) governs the OCC's imposition of conditions to address a significant supervisory, Community Reinvestment Act (CRA), or compliance concern if the OCC determines that the conditions are necessary or appropriate to ensure that approval is consistent with relevant statutory and regulatory standards, including those designed to ensure the fair treatment of consumers and fair access to financial services, and OCC policies thereunder and safe and sound banking practices. The OCC imposes conditions on a case-by-case basis and makes a determination of appropriate conditions based on a merger's facts and circumstances.

¹⁴ Proposed appendix A would not have addressed the BMA statutory factors of competition

financial condition; size; Uniform Financial Institution Ratings System (UFIRS)¹⁷ or risk management, operational controls, compliance, and asset quality (ROCA)¹⁸ ratings; Uniform Interagency Consumer Compliance Rating System (CC Rating System) rating; Community Reinvestment Act (CRA) rating; the effectiveness of its Bank Secrecy Act/anti-money laundering program; and the absence of fair lending concerns; (ii) attributes regarding the target's size and status as a eligible depository institution, as defined in § 5.3; (iii) the transaction clearly not having a significant adverse effect on competition; and (iv) the absence of significant CRA or consumer compliance concerns, as indicated in any comments or supervisory information.

The *General Principles of OCC Review* section of proposed appendix A would have also recognized that there are indicators that raise supervisory or regulatory concerns. Based on the OCC's experience, if any of these indicators are present, the OCC is unlikely to find the statutory factors under the BMA to be consistent with approval unless and until the applicant has adequately addressed or remediated the concern. Proposed appendix A would have stated that these indicators include: (i) the acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance; (ii) the acquirer has a UFIRS or ROCA composite or management rating of 3 or worse; (iii) the acquirer has a consumer compliance rating of 3 or worse; (iv) the acquirer is a global systemically important banking organization (G-SIB), or subsidiary thereof;¹⁹ (v) the acquirer has an open or pending Bank Secrecy Act/Anti-Money Laundering enforcement or fair lending action, including referrals or notification to other agencies;²⁰ (vi) failure by the acquirer to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner; and (vii) multiple enforcement actions against the acquirer

executed or outstanding during a three-year period.

Commenters expressed confusion about how these indicators apply and how the OCC's reviews applications that meet some, but not all, of the indicators that generally feature in applications consistent with approval. For example, numerous commenters interpreted the proposed policy statement as indicating that the OCC would not approve an application if one of the first set of indicators was absent. Commenters also requested clarification about how an absence or resolution of any or most of the listed indicators of supervisory or regulatory concerns would expedite a positive decision on an application.

The OCC understands the confusion of some commenters with respect to appendix A as proposed. In addition to the two categories of transactions recognized in proposed section II, there is a middle category of transactions that do not feature all of the indicators in the first category but also have none of the indicators that raise supervisory or regulatory concerns. The OCC believes that most transactions will be in this middle category and that many of these transactions are likely consistent with approval.

The OCC is revising proposed appendix A to eliminate this confusion and clarify the significance of the two types of indicators. The final appendix A includes prefatory text that notes that applications that feature all of the first set of indicators tend to be more likely to withstand scrutiny and to be approved expeditiously. In the OCC's experience, these indicators reflect a national bank or Federal savings association's condition or other features that the OCC is likely to quickly find consistent with approval. However, these indicators are not *required* for a transaction to be approved. For example, the OCC has approved many transactions where the target is not an eligible depository institution and the acquirer brings the appropriate financial and managerial resources to bear to mitigate deficiencies at the target.

With respect to the individual indicators, some commenters objected to \$50 billion in total assets serving as a ceiling for transactions consistent with approval. One commenter requested that the OCC raise indicator to \$100 billion or more in total assets. Another commenter noted that having \$50 billion dollars as a threshold could prevent or make it more difficult for regional and mid-sized institutions to combine and compete with the largest banks. As clarified in final appendix A, the \$50 billion indicator merely reflects the likelihood of an expeditious

approval. The OCC recognizes that national banks and Federal savings associations with \$50 billion or more in total assets tend to be more complex than smaller banks. For example, insured national banks and Federal savings associations with at least \$50 billion in total assets are subject to the *OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches*. In light of the increased complexity of these institutions, the OCC may require additional time for review of the application. The OCC believes that many transactions where the resulting institution will have total assets of more than \$50 billion are consistent with approval. Accordingly, the OCC is finalizing the indicator as proposed at \$50 billion or more in total assets, as clarified by a modification to the prefatory text to the indicators.

Two commenters expressed concern with the indicator focusing on transactions where the target's total assets are less than or equal to 50 percent of acquirer's total assets. The indicator is not intended to discourage mergers of equals. It was included because, in the OCC's supervisory experience, mergers between institutions of similar sizes are likely to require more review than transactions where the target is much smaller than the acquirer. In transactions with significant size disparities, the acquirer is more likely to use its existing policies, procedures, and control framework, with which the OCC is already familiar. Integration of two similarly sized institutions is more likely to result in more changes to resulting institution, which the OCC will need to review for consistency with the applicable BMA factors. The inclusion of this indicator simply highlights that applications for mergers between institutions that are similar in size may require additional time to assess but does not indicate that those applications will not be approved. The OCC is, however, deleting the word "combined" referring to the target's total assets in this indicator for clarity. The OCC is thus finalizing this indicator as proposed, as clarified by a modification of the prefatory text to the indicators which emphasizes that the first set of indicators are intended to identify applications that are more likely to withstand scrutiny and to be approved expeditiously.

Commenters also asserted that the proposed indicators regarding lack of enforcement actions, lack of fair lending concerns, clear absence of a "significant

¹⁷ UFIRS is also known as the CAMELS rating system. The CAMELS component factors address capital, asset quality, management, earnings, liquidity, and sensitivity to market risk.

¹⁸ The ROCA System is the interagency uniform supervisory rating system for U.S. branches and agencies of foreign banking organizations.

¹⁹ The Basel Committee on Bank Supervision annually identifies certain banking organizations as global systemically important.

²⁰ For example, the OCC is required to institute an enforcement action or make a referral if it makes certain supervisory findings with respect to the Bank Secrecy Act or fair lending laws. *See, e.g.*, 12 U.S.C. 1818(s)(3); 15 U.S.C. 1691e(g).

adverse effect” on competition, and no adverse public comments are inconsistent with the applicable standards under the BMA. Other commenters supported these indicators but had additional suggestions including urging the OCC to include language about coordinating with the Consumer Financial Protection Bureau regarding fair lending and consumer protection matters; barring applicants with records of noncompliance with fair lending, CRA, and other consumer protection laws from being acquired; and requiring merging parties to undergo new fair lending and CRA reviews under heightened scrutiny. The OCC does not require that all of these indicators are present for a transaction to be consistent with the BMA’s statutory factors. Rather, the OCC can more quickly find that applications with all of these indicators are consistent with the BMA factors and approve the transactions. For example, a merger between two institutions without an overlapping footprint and few products in common will require less analysis with respect to competition compared to a merger between institutions with significant overlap. Similarly, the OCC approves mergers on which the public has commented after reviewing all comments. The OCC recognizes that while comments play an important role in the review process, some comments may fail to raise a significant supervisory, CRA, or compliance concern.²¹ The OCC does not expect such comments, on their own, to warrant less expeditious processing of the application. Therefore, OCC is finalizing these indicators as proposed, as clarified by a modification of the prefatory language to the indicators.

With respect to the indicators of supervisory or regulatory concern, commenters expressed concern with any indication in the proposed appendix A that the acquirer is a G-SIB or subsidiary thereof would be unlikely to be consistent with approval. Some commenters noted that the indicator could restrict internal reorganizations by a G-SIB and its subsidiaries. Additionally, two commenters noted that Congress has already addressed large-bank concentration by prohibiting bank acquisitions based on deposit concentrations and that the OCC’s use of the G-SIB designation was inconsistent with Congressional intent. Other commenters expressed concern that the indicator could be interpreted to include proposed business

combinations involving U.S.-based bank subsidiaries of non-U.S. G-SIBs. These commenters assert that applications for combinations involving such entities could bring diversity to the U.S. banking system. On the other hand, another commenter supported increased scrutiny of transactions involving G-SIBs but asserted that transactions undertaken by large, non-G-SIBs should also trigger enhanced scrutiny.

The indicators of regulatory or supervisory concern do not preclude OCC approval of a BMA application by an institution that exhibits one or more of the indicators. For example, internal corporate reorganizations are frequently consistent with the BMA, notwithstanding many regulatory or supervisory concerns, particularly where the transaction enhances the resolvability of the institution. The OCC views these factors regarding size as independent from limits that Congress established in the BMA and the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal).²² For certain interstate transactions, the BMA contains a national deposit cap, and Riegle-Neal has national and State deposit caps.²³ Similarly, there is a liability cap imposed by the Dodd-Frank Wall Street Reform and Consumer Protection Act²⁴ that applies to both holding companies and banks.²⁵ These are all limits that a bank may not exceed absent a specific statutory exception. In contrast, the G-SIB indicator in the proposal reflects the OCC’s supervisory experience with organizations of that size and the impact of size and complexity on the review of a business combination.

Similarly, even though the U.S. operations of a foreign-based G-SIB may be smaller than those of domestic G-SIBs, the potential for supervisory issues remains high, particularly if the foreign G-SIB’s U.S. operations are material. G-SIBs are among the most complex financial institutions and, in the OCC’s supervisory experience, they often present supervisory issues such that inclusion of this indicator is warranted. The OCC recognizes, however, that G-SIB status is unlikely to be remediated. While the OCC continues to believe that the G-SIB indicator is appropriate, it will evaluate all applications from foreign and domestic G-SIBs on their individual merits and undertake a fulsome analysis

under the BMA and other applicable law.

Another commenter noted that a less than “Satisfactory” CRA rating should not preclude an internal reorganization that would simplify the banking organization and make it safer and sounder. Congress has mandated that the OCC consider an institution’s CRA rating when acting on any BMA application.²⁶ The OCC recognizes that internal reorganizations present facts and analysis distinguishable from many other BMA applications, and while the inclusion of this indicator does not indicate those applications will not be approved, additional scrutiny may be warranted. In some instances, the benefits of a reorganization may overcome the less than “Satisfactory” CRA rating. Nevertheless, the OCC regards a less than “Satisfactory” CRA rating as raising significant regulatory or supervisory concerns and warranting inclusion on the list of indicators. One commenter also praised the inclusion of instances where an acquirer has experienced rapid growth as an indicator of supervisory or regulatory concern.

The OCC is making one change to the indicator regarding open enforcement actions. Proposed appendix A was specific to Bank Secrecy Act/Anti-money Laundering or fair lending actions, including referrals or notifications to other agencies. The OCC is including all types of consumer compliance enforcement actions in final appendix A to reflect the seriousness of these types of enforcement actions. Accordingly, the OCC is generally finalizing these indicators as proposed, as clarified by a modification to the prefatory language to the indicators and the addition of consumer compliance enforcement actions.

Section III, *Financial Stability*, of proposed appendix A would have provided additional information about how the OCC considers “the risk to the stability of the United States banking or financial system” as required by the BMA, including (i) the factors the OCC considers (which are currently described in the “Business Combinations” booklet of the *Comptroller’s Licensing Manual*); (ii) the balancing test that the OCC applies; and (iii) the OCC’s ability to consider imposing conditions on the approval of any such transaction. The OCC’s approach to considering the risk to the stability of the financial system set forth in proposed appendix A is consistent with longstanding OCC practice and

²² Public Law 103–328, 108 Stat. 2338 (Sept. 29, 1994).

²³ 12 U.S.C. 1828(c)(13), 1831u(b)(2).

²⁴ Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

²⁵ See 12 U.S.C. 1852.

²⁶ 12 U.S.C. 2903(a)(2).

²¹ See 12 CFR 5.13(a)(2)(ii) (describing comments that do not warrant removing a filing from expedited review).

principles.²⁷ Specifically, the OCC considers (i) whether the size of the combined institutions would result in material increases in risk to financial stability; (ii) any potential reduction in the availability of substitute providers for the services offered by the combining institutions; (iii) whether the resulting institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the resulting institution, would cause significant risks to other institutions; (iv) the extent to which the combining institutions contribute to the complexity of the financial system; (v) the extent of cross-border activities of the combining institutions; (vi) whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution's business in the event of failure or insolvency; and (vii) any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

Section III, *Financial Stability*, of proposed appendix A would have clarified that the OCC applies a balancing test when considering the financial stability factor and weighs the financial stability risk of approving the proposed transaction against the financial stability risk of denying it, particularly if the proposed transaction involves a troubled target. Specifically, the OCC considers each factor individually and in combination. Even if only a single factor indicates a risk to the stability of the U.S. banking or financial system, the OCC may determine that the proposal would have an adverse effect on the stability of the U.S. banking or financial system.²⁸ The OCC also considers whether the proposed transaction would provide any stability benefits and the enhanced prudential standards that would be applicable as a result of the proposed transaction would offset any potential risks.²⁹

Section III also would have noted that, consistent with current OCC practice,³⁰ the OCC's review of the financial stability factors may result in a decision to approve a proposed transaction, subject to conditions that are enforceable under 12 U.S.C. 1818. These conditions may include asset

divestitures or higher minimum capital requirements and are intended to address and mitigate financial stability risk concerns.

Further, the OCC's review of the financial stability factors considers the impact of the proposed transaction in the context of any heightened standards applicable to the resulting institution pursuant to 12 CFR part 30, appendix D, "OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches" and the recovery planning standards applicable to the resulting institution pursuant to 12 CFR part 30, appendix E, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches." Section III also would have stated that the OCC may consider the facts, circumstances, and representations of concurrent applications for related transactions, including the impact of the related transactions on the proposed transaction.³¹

Commenters generally supported the OCC's goal of providing additional transparency about how the OCC considers the effect of a transaction on financial stability. However, some commenters criticized the OCC's balancing test approach to evaluating financial stability as too lenient to protect financial institutions and the broader economy, especially for G-SIBs. These commenters noted that the OCC should not rely on enhanced prudential standards to offset risks. One commenter also objected to the OCC's consideration of the financial stability risk associated with denying an application in the balancing test and noted that the OCC should use the supervisory process and not business combinations to address concerns about troubled institutions. Some commenters suggested options including other, scored risk factors like the list of systemic risk factors used to calculate the G-SIB surcharge in 12 CFR part 217, subpart H. Additionally, commenters expressed concern that the OCC's review would consider the representations made in other pending applications and noted that applicants may not have detailed knowledge of pending or future applications. Another commenter suggested that the OCC revise proposed appendix A to promote

more actively the acquisition of a troubled institution before it fails. One commenter suggested automatically categorizing transactions involving institutions below \$10 billion in assets as low risk to financial stability unless specific factors suggest otherwise. Other commenters suggested that considerations of financial stability risks under the BMA must include an evaluation of climate-related financial risks and the impact of a resulting institution's activities on financial stability in that regard.

The proposed appendix A described the OCC's long-standing approach to considering the risk to the stability of the financial system and would have provided additional clarity on the factors considered, the balancing test applied, and the possibility that the OCC may impose conditions in certain situations. Although the OCC's considerations are not scored, the OCC considers each factor individually and in combination to develop a holistic view of the potential transaction's effect on financial stability. The OCC believes this balancing test allows it to consider all factors relevant to financial stability and results in determinations that fully incorporate the effect of the transaction on financial stability. Additionally, the OCC's review would have only considered the representations of other concurrent applications for related transactions, not unrelated applications that have no nexus to the application under consideration.

The OCC is removing the word "requirements" from the discussion of the OCC's consideration of the impact of the proposed transaction in light of the standards applicable to the resulting institution's recovery planning in Section III, *Financial Stability*, to more accurately describe the standards in 12 CFR part 30, appendix E, "OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches". The OCC is otherwise generally finalizing Section III, *Financial Stability*, as proposed.

Section IV, *Financial and Managerial Resources and Future Prospects*, of proposed appendix A would have discussed the BMA's requirement that the OCC consider the managerial resources, financial resources, and future prospects of any proposed transaction. Under the BMA, the OCC must consider each of these factors independently for both the combining and resulting institutions.³² However, because these factors are directly related

²⁷ See, e.g., OCC Conditional Approval #1298 (November 2022); OCC Corporate Decision #2012-05 (April 2012).

²⁸ See, e.g., FRB Order No. 2012-2 (February 14, 2012) at 30.

²⁹ See, e.g., FRB Order No. 2021-04 (May 14, 2021) at 24.

³⁰ See, e.g., OCC Conditional Approval #1298 (November 2022).

³¹ For example, many business combinations under the BMA are part of a larger transaction that requires a filing with the Board under the Bank Holding Company Act.

³² 12 U.S.C. 1828(c)(5).

to one another, the OCC also considers these factors holistically. This section of proposed appendix A would have described the overarching considerations of the OCC's review of these factors and provide additional details about what the OCC considers while reviewing these factors. The overarching considerations of this proposed section would have noted that the OCC would consider the size, complexity, and risk profile of the combining and resulting institutions.

Further, proposed appendix A would have expanded the discussion in the *Comptroller's Licensing Manual* about the types of transactions the OCC would normally not approve to provide additional details about acquirer characteristics with respect to financial and managerial resources and future prospects that are less likely to result in an approval. Specifically, the OCC is less likely to approve an application when the acquirer (i) has a less than satisfactory supervisory record, including its financial and managerial resources; (ii) has experienced rapid growth; (iii) has engaged in multiple acquisitions with overlapping integration periods; (iv) has failed to comply with conditions imposed in prior OCC licensing decisions; or (v) is functionally the target in the transaction.³³ The OCC also normally does not approve a combination that would result in a depository institution with less than adequate capital, less than satisfactory management, or poor earnings prospects.

Finally, this subsection would have confirmed the OCC's practice of considering all comments on proposed transactions, including those on financial and managerial resources and future prospects. To the extent public comments address issues involving confidential supervisory information, however, the OCC generally would not discuss or otherwise disclose confidential supervisory information in public decision letters.

Section IV of proposed appendix A would have next discussed the OCC's consideration of the financial resources, managerial resources, and future prospects factors. With respect to financial resources, proposed appendix A would have discussed the OCC's review of pro forma capital levels. Additionally, the OCC is generally prohibited by statute from approving

business combination applications filed by an institution that is undercapitalized as defined in 12 CFR 6.4.³⁴ Proposed appendix A also would have specified that the OCC closely scrutinizes transactions that increase the risk to the bank's financial condition and resilience, including risk to the bank's capital, liquidity, and earnings that can arise from any of the eight categories of risk included in the OCC's Risk Assessment System.³⁵ Further, with respect to the financial resources factor, the OCC considers the ability of management to address increased risks that would result from the transaction. Finally, proposed appendix A would have clarified that a transaction involving an acquirer with a strong supervisory record is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory supervisory record is less likely to satisfy this factor.

Section IV of proposed appendix A would have also discussed the OCC's approach to the managerial resources standard. The OCC considers the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources. For example, a significant number of matters requiring attention (MRA), or lack thereof, may impact the determination as to whether there are sufficient managerial resources. The OCC also reviews (i) both institutions' management ratings under the UFIRS or ROCA system, as well as their component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable; and (ii) relevant Risk Assessment System (RAS) conclusions for the applicant as well as the RAS conclusions for an OCC-supervised target. The OCC also considers the context in which the rating or RAS element was assigned and any additional information resulting from ongoing supervision. Finally, proposed appendix A would have noted that less than satisfactory ratings at the target do

not preclude the approval of a transaction, provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses.

Proposed appendix A would have stated that the OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand its business model, systems compatibility, and weaknesses. This consideration includes the acquirer's plans and ability to address its own previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution. Similarly, the OCC considers the acquirer's plans for and history of integrating combining institutions' operations, including systems and information security processes, products, services, employees, and cultures.

Proposed appendix A next would have discussed the OCC's consideration of the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and implications for business continuity and resilience. A critical component of these plans includes identifying overreliance on manual controls, strategies for automating critical processes, and capacity and modernization of aging and legacy information technology systems. The OCC may conduct additional reviews where there are concerns with systems integration and, in some cases, the OCC may impose conditions that are enforceable pursuant to 12 U.S.C. 1818 to address those concerns. The OCC may deny an application if the integration or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.³⁶

Finally, with regard to managerial resources, proposed appendix A would have described the OCC's consideration of the proposed governance structure of the resulting institution. This includes consideration of (i) governance in decision-making processes, the board management oversight structure, and the risk management system, including change management; and (ii) the expansion of existing activities, introduction of new or more complex products or lines of business, and implications for managing existing and acquired subsidiaries and equity investments. When applicable, the resulting institution's governance is also

³⁴ 12 U.S.C. 1831o(e)(4). The OCC may only approve a combination application by an undercapitalized institution if the agency has accepted the institution's capital restoration plan and determines that the proposed combination is consistent with and will further the achievement of the plan or if the Board of Directors of the Federal Deposit Insurance Corporation determines that the proposed combination will further the purposes of 12 U.S.C. 1831o. 12 U.S.C. 1831o(e)(4)(A)–(B).

³⁵ These are credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation risks. See *Comptroller's Handbook*, "Bank Supervision Process" at 26–28 (Version 1.1, September 2019).

³⁶ See 12 CFR 5.13(b).

³³ For example, in a reverse triangular merger, a holding company may acquire an institution and merge its existing subsidiary into the newly acquired institution, which survives as a subsidiary of the holding company. See *Comptroller's Licensing Manual*, "Business Combinations" at 23 (January 2021).

considered in the context of the institution's relationship with its holding company and the scope of the holding company's activities.

Section IV of proposed appendix A also would have discussed how the OCC considers the future prospects factor. The OCC considers this factor in light of its assessment of the institutions' financial and managerial resources. The OCC also considers the proposed operations of the resulting institutions and the acquirer's record of integrating acquisitions. Specifically, the OCC considers whether the integrated institution will be able to function effectively as a single entity. The OCC also considers the resulting institution's business plan or strategy and management's ability to implement it in a safe and sound manner. Finally, the OCC considers the combination's potential impacts on the resulting institution's continuity planning and operational resilience.

One commenter highlighted the importance of assessing managerial resources and firm culture when considering an application under the BMA. This commenter urged the OCC to make it clear that, when considering the managerial resources factor, the OCC would take into consideration whether the acquirer and target have implemented governance solutions that generate outcomes that meet or exceed the OCC's expectations and suggested using artificial intelligence and machine learning tools to do so. Other commenters suggested that an assessment of financial and managerial resources and future prospects should include climate-related financial risk expertise. Several other commenters suggested the OCC include a requirement that banks describe their efforts to promote gender, racial, and ethnic diversity in their boards, senior management, and branch personnel, with some commenters suggesting that such information be considered under the managerial resources factor. One commenter also suggested that applicants submit an integration plan as part of their application. Given the varied nature of institutions' operations and proposed mergers, the OCC is declining to require these items as part of its review of all applications under the BMA. To the extent that it is relevant to any particular transaction, the OCC may, based on its supervisory expertise, request information on these or other items that are relevant to the financial and managerial and future prospects factors.

The OCC is thus generally finalizing section IV as proposed with one addition to make explicit a

consideration that was implicit in the proposal. The OCC is adding a new overarching consideration in section IV of appendix A. Specifically, section IV will state that the OCC considers the financial and managerial resources and future prospects factors within the context of the prevailing economic and operating environment. The OCC recognizes that the financial resources and future prospects of institutions, and those of community institutions in particular, are likely to be highly dependent on the economic and other environments within which they operate. As such, a combined institution's financial resources and future prospects may in some cases be significantly greater than those of the individual institutions if no merger were to occur.

Section V of proposed appendix A would have expanded on the discussion in the *Comptroller's Licensing Handbook* of the OCC's consideration of the probable effects of the proposed business combination on the community to be served. Specifically, this section would have clarified that the OCC's consideration of the impacts of any proposed combination on the convenience and needs of the community is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated.³⁷ For this factor, the OCC considers, among other things (i) the proposed changes to branch locations, branching services, banking services or products, or credit availability offered by the target and acquirer, including in low- or moderate-income (LMI) communities; (ii) any job losses or lost job opportunities from branching changes; and (iii) any community investment or development initiatives, including particularly those that support affordable housing and small businesses. With respect to (i) above, the OCC also sought comment on whether to specify communities in addition to LMI communities as part of these considerations.

Finally, section V of proposed appendix A would have clarified that the OCC's forward-looking consideration of the convenience and needs factor under the BMA is separate and distinct from its consideration of an applicant's CRA record of performance in helping to meet the credit needs of the relevant community, including LMI neighborhoods.

³⁷ As the OCC's review of this factor is with respect to the resulting institution, it necessarily includes review of the record, products, and services of both the acquirer and target.

Commenters expressed varying viewpoints on Section V, *Convenience and Needs*, of proposed appendix A. Some commenters criticized the OCC's inclusion of job losses or reduced job opportunities, and one commenter stated that such consideration lacked a statutory basis and diverged from longstanding regulatory precedent. Other commenters encouraged the OCC to place greater emphasis on factors such as potential job losses; projected branch losses in LMI and majority-minority census tracts; impacts to communities of color and underserved census tracts, including small businesses in those communities; reduced reinvestment; increased fees; and other factors that could affect access to banking services when evaluating the community and needs factor. One commenter suggested the OCC consider past bank branch closures. Another commenter recommended that the OCC require applicants to submit a list of branch closures planned for the three years following the consummation of a merger and a discussion of the impact on local communities and stated that applicants should be prohibited from closing other branches for three years. Some commenters suggested that a merger should not be approved unless applicants can demonstrate that the transaction will better meet the convenience and needs of the community, with several commenters specifically noting that the OCC should only approve transactions that better serve vulnerable communities, including low-income communities and communities of color. Several commenters suggested that the OCC's review of the convenience and needs factor should include broad consideration of the climate-related impact of the transaction, including financial risk, impacts resulting from bank activities that may impact climate change, and the climate related transition plans. One commenter suggested that the OCC should provide additional clarity on how it weighs the various impacts it considers. Other commenters noted that the OCC should specifically consider how the impacts of the expansion of digital banking affects underserved communities in the context of merger reviews.

Several commenters emphasized the importance of community benefit agreements and plans and collaboration with community groups and urged the OCC to use its policy statement to elevate the importance of these agreements, plans, and collaborations. Suggestions included signaling that the OCC would enforce community benefit

commitments made during merger applications or imposing a condition of approval on the acquirer requiring it to adhere to the elements of such commitments. Another commenter requested additional transparency with respect to conditional approvals for convenience and needs, CRA, or fair lending concerns.³⁸

The OCC considers the convenience and needs factor in light of the specific facts of each transaction. The factors listed in proposed section V are indicators of whether the proposed transaction will enable the resulting institution to better meet the convenience and needs of its community. A net positive impact on its ability to meet the convenience and needs of community is, in the OCC's experience, generally consistent with approval with respect to this factor. Applicants need not make a showing with respect to any or all of these items for the application to be consistent with approval. The OCC agrees with commenters that the BMA does not require consideration of particular facts such as job losses with respect to the convenience and needs of the community. Consistent with the BMA, the OCC will evaluate the facts of each application and determine whether particular items are relevant to its consideration of convenience and needs of the specific community to be served. For example, job losses or reduced job opportunities may have an impact on the local community as a whole in certain circumstances. Additionally, the OCC will consider any plans regarding the availability or cost of banking services or products to the community in the context of the communities affected, including LMI communities. Based on its supervisory experience, including its review of business combination applications, the OCC believes that the existing information requirements in the Interagency Bank Merger Act Application provide the appropriate initial level of information. The OCC may request additional information regarding branch closures or other facts impacting the convenience and needs of the community to be

served. Further, the OCC believes that the items listed in proposed section V are appropriately tailored to cover the full range of BMA applications it receives.

Another commenter suggested that unless material changes are expected post-consummation, the OCC should use the acquirer's and target's CRA ratings as the primary method of assessing a merger's impact on the convenience and needs of the community. Other commenters asserted that CRA alone is not sufficient for determining a merger's impact on the convenience and needs of the community. As discussed in the Business Combinations booklet of the *Comptroller's Licensing Manual*, a CRA rating is based on past performance, while the convenience and needs factor is prospective.³⁹ Accordingly, analysis of past CRA performance is not sufficient to analyze the prospective convenience and needs of the community. The OCC believes that section V correctly articulated this standard as proposed.

The OCC is making clarifying edits to section V of appendix A. The OCC is changing the order of the discussion of an institution's plans to close, consolidate, limit, or expand branches to have the activities in a more logical sequence. Likewise, with respect to credit availability, the OCC is specifying that it considers an institution's plans to maintain, reduce, or improvement credit availability, including access to specific types of loans. Accordingly, the OCC is finalizing section V generally as proposed.

Section VI, *Public Comments and Meetings*, of proposed appendix A would have provided additional details about the process and procedures relating to the OCC's receipt of public comments and considerations related to public meetings and clarified the information contained within 12 CFR part 5 and the "Public Notice and Comments" booklet of the *Comptroller's Licensing Manual*.⁴⁰ Specifically, the public comments subsection would have articulated the circumstances under which the OCC may extend the usual 30-day comment period⁴¹ pursuant to § 5.10(b)(2).⁴² It also would

have provided additional clarity by noting that the OCC may find that additional time is necessary to develop factual information, and thus warrant extending the comment period. This could happen, for example, if a filer's response to a comment does not fully address the matters raised in the comment and the commenter requests an opportunity to respond. This subsection also would have provided examples of extenuating circumstances when the OCC may determine that an extension is needed, including if a public meeting is held, the transaction is novel or complex, or a natural disaster has occurred that affects the public's ability to timely submit comments.

With respect to the discussion of public comments, some commenters supported the proposal's discussion of how a comment period can be extended when a filer does not adequately respond to a commenter. However, other commenters expressed concern that the OCC's ability to extend the comment period based on the completeness of a filer's response to a comment may create a risk of commenters repeatedly filing comments in bad faith, which will result in delay. Two commenters suggested that the OCC consider extending the comment period in some instances, with one commenter suggesting that the OCC use an initial 60-day comment period for larger transactions. Other commenters also encouraged the OCC to minimize the negative impacts of prolonged review periods on affected communities and stakeholders. One commenter also requested that the OCC develop policies to address the abuse of the public comment process, including via the use of artificial intelligence.

The OCC did not propose any changes to its regulations regarding its acceptance and review of public comments, which are broadly applicable to transactions covered by 12 CFR part 5 and not only business combinations. The OCC periodically considers which of its regulations would benefit from proposed changes and will consider whether to propose changes to the public comment regulations at an appropriate time.⁴³ The OCC is mindful

³⁸ Additionally, one commenter recommended increased scrutiny of convenience and needs in transactions where credit unions acquire national banks because credit unions are not subject to CRA. The Federal Deposit Insurance Corporation, not the OCC, is the responsible agency for BMA transactions where national bank or Federal savings association assets and deposit liabilities are transferred to an institution that is not covered by the Deposit Insurance Fund, such as a credit union. See 12 U.S.C. 1828(c)(1)(C). To the extent an application with the OCC is required, such as a substantial asset change under 12 CFR 5.33, the OCC will examine the proposed transaction under all applicable standards.

³⁹ See *Comptroller's Licensing Manual*, "Business Combinations" (Jan. 2021) at 7.

⁴⁰ While the BMA does not require the OCC to hold meetings or hearings, 12 CFR 5.11 describes the consideration and procedures for public hearings and notes the availability of several other types of meetings. The OCC considers three options for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting.

⁴¹ See 12 CFR 5.10(b)(1).

⁴² Specifically, part 5 notes that the OCC may extend the comment period when: (1) a filer fails

to file all required publicly-available information on a timely basis or makes a request for confidential treatment not granted by the OCC; (2) a person requesting an extension demonstrates to the OCC that additional time is necessary to develop factual information the OCC determines is necessary to consider the filing; and (3) the OCC determines that other extenuating circumstances exist.

⁴³ For example, the OCC decennially reviews its regulations as required by the Economic Growth and Regulatory Paperwork Reduction Act. 12 U.S.C.

of the effects of the length of review periods on all relevant parties. The OCC uses the standard 30-day notice period prescribed by the BMA⁴⁴ and will extend the comment period pursuant to the factors discussed in section VI as appropriate. The OCC intends to act on applications in a timely fashion, consistent with a fulsome review of applications and safety and soundness. To clarify that the purpose of section VI is to address considerations regarding the public comment period and not the OCC's acceptance and review of public comments, the OCC is revising the headings in section VI to specifically reference the public comment period.

The proposed public meetings subsection of section VI would have stated that when determining whether to hold a public meeting, the OCC balances the public's interest in the transaction with the value or harm of a public meeting to the decision-making process. Proposed appendix A would also have clarified the criteria that inform the OCC's decision on whether to hold a public meeting. The criteria include (i) the public's interest in the transaction; (ii) the appropriateness of a public meeting to document or clarify issues raised during the public comment process; (iii) the significance of the transaction to the banking industry; (iv) the significance of the transaction to the communities affected; (v) the potential value of any information that could be gathered and documented during a public meeting; and (vi) the acquirer's and target's CRA, consumer compliance, fair lending, or other pertinent supervisory records, as applicable. Several commenters proposed additional triggers for holding public meetings, including when there is a significant overlap in branch networks, when CRA ratings are lower in affected geographies, when the resulting entity will exceed a certain asset size, or when there is a merger protest. These commenters also suggested several ways that the OCC could improve outreach to underserved communities and dialogue about the impact of potential mergers. These included adopting a public registry for CRA examinations and mergers, improving the format of public meetings, and providing clearer information on regulatory websites on how to engage with regulators on particular mergers. One commenter objected to what it characterized as the OCC's implication that input from the

public could be harmful to the OCC's decision-making process. This commenter suggested a public meeting should be held when requested.

As discussed in proposed section VI, the OCC considers the significance of the transaction to the communities affected, as well as applicable CRA ratings. The OCC believes that these considerations are sufficiently broad to cover issues such as a significant overlap in branch networks. Further, the OCC believes that a decision to hold a public meeting should be based on the individual facts and circumstances of each proposed merger. For example, the considerations for whether to hold a public meeting on an internal corporate reorganization likely differ from those in a transaction between unaffiliated institutions. Additionally, the OCC believes that the fact that a comment is filed with respect to a proposed merger is insufficient alone to warrant a meeting. For example, through requests for additional information, the OCC can often obtain the information it needs to fully consider the comment without organizing a meeting. Consistent with applicable law, the OCC makes public all CRA performance evaluations on its website⁴⁵ and all applications under the BMA in its Freedom of Information Act Reading Room.⁴⁶ While the OCC may consider additional methods to provide information to the public it believes that this issue is outside the scope of appendix A. Similarly, 12 CFR 5.11(i) provides the OCC with broad discretion in the conduct of public meetings. The OCC may tailor the format and structure of public meetings as needed based on the specific circumstance. The OCC believes that the information contained in proposed section VI is appropriate for general consideration of public meetings. Accordingly, besides the revision to the headings in section VI to specifically reference the public comment period, the OCC is generally finalizing section VI as proposed.

IV. Regulatory Analysis

A. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),⁴⁷ the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements in

this rule have been submitted to OMB under OMB control number 1557-0014 (Licensing Manual).

The final rule amends 12 CFR 5.33 by removing the expedited review procedures in § 5.33(i), which currently allow an application to be deemed approved by the OCC as of the 15th day after the close of the comment period, unless the OCC notifies the filer that the filing is not eligible for expedited review or the expedited review process is extended. The final rule also removes the streamlined application in § 5.33(j), which removes the ability of eligible institutions to file for certain types of business combinations using a streamlined application form.

Title: Licensing Manual.

OMB Control Number: 1557-0014.

Frequency of Response: Occasional.

Affected Public: National banks and Federal savings associations.

The changes to the burden of the Licensing Manual are *de minimis* and continue to be:

Estimated Number of Respondents: 3,694.

Estimated Total Annual Burden: 12,481.15.

Comments continue to be invited on:

a. Whether the collections of information are necessary for the proper performance of the agency functions, including whether the information has practical utility;

b. The accuracy of the agency estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Written comments and recommendations for the information collection should be sent within 30 days of publication of this notice. Comments on the collection of information should be sent to Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0014, 400 7th Street SW, Suite 3E-218, Washington, DC 20219. Comments may also be sent to prainfo@occ.treas.gov or www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 30-day

3311. See, e.g., Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 89 FR 8084 (February 6, 2024).

⁴⁴ See 12 U.S.C. 1828(c)(3).

⁴⁵ OCC, CRA Performance Evaluations, <https://occ.gov/publications-and-resources/tools/index-cra-search.html>.

⁴⁶ OCC, Freedom of Information Act, <https://foia-pal.occ.gov/>.

⁴⁷ 44 U.S.C. 3501-3521.

Review—Open for Public Comments” or using the search function.

B. Regulatory Flexibility Act

The RFA⁴⁸ requires an agency, in connection with a proposal and final rule, to prepare and make available to the public a Regulatory Flexibility Analysis that describes the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of \$850 million or less and trust companies with total assets of \$47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule. The OCC included an RFA certification in the **Federal Register** along with its proposal.

As discussed above, the SBA’s Office of Advocacy and one other commenter stated that the proposal’s RFA certification lacked a factual basis. The SBA’s Office of Advocacy, along with other commenters, recommended that the OCC continue to allow expedited review for applications from small entities and allow those entities to continue to use the streamlined application form. Specifically, with respect to the proposal’s RFA certification, the SBA’s Office of Advocacy’s comment and the other comment addressing the RFA stated that it lacked sufficient information about (1) the number of small entities that would be impacted because it only estimated the number of entities that would apply for business combinations in a given year and did not explain how many of those entities were small entities and (2) the basis for its conclusion that the impact on affected institutions would be *de minimis*.

The OCC currently supervises 1,040 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),⁴⁹ of which approximately 636 are small entities.⁵⁰

As the SBA’s Office of Advocacy noted, all of the 636 small entities may have been impacted by the proposed rule to the extent that they elected to submit applications to the OCC for approval of business combination activities. However, in practice and based on the number of merger applications that the OCC has received annually over the past five years, the agency expects the annual impact of the final rulemaking could be 78 OCC-supervised small institutions in a given year, assuming that all merger applications are submitted by small banks.

In terms of the potential economic impact of the final rule on affected institutions, the OCC does not expect that the changes will result in (1) a different outcome for merger applications or (2) additional burden on affected institutions. First, the final appendix A aims to provide transparency with respect to the OCC’s BMA review process, including consideration of certain statutory factors under the BMA. This should provide regulated institutions with additional clarity and transparency about the OCC’s decision-making process. Second, the removal of the expedited review process will likely not result in any change to the timing of the OCC’s processing of licensing applications. The only benefit conferred by the expedited review provisions in § 5.33(i) is that applications are deemed approved as of the 15th day after the close of the comment period unless the OCC takes action to remove the application from expedited review or extends the process. However, the OCC is not aware of an application for a business combination being deemed approved due to the passage of time under § 5.33(i). Third, the OCC expects that the removal of the streamlined application form will not result in a substantive impact on affected institutions or on the information collected. Although the Interagency Bank Merger Act Application requires the submission of additional documentation and information with the initial application, that documentation and information is largely related to the same categories of information. Further, in practice, the OCC may request additional information from applicants to enable it to conclude on the applicable statutory factors. Eliminating the streamlined application may decrease the likelihood the OCC needs to request additional information

a “financial institution’s assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.” See footnote 8 of the SBA’s *Table of Size Standards*.

from applicants, which could otherwise slow down the processing of an application. The agency also does not expect that the removal of the streamlined application will result in a material change to the time it takes to OCC to respond to submitting banks and, therefore, does not expect any subsequent impact on bank operations that could otherwise result from a delayed response from the OCC. Accordingly, the OCC expects these changes to have a *de minimis* impact on small entities.

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity’s total annual salaries and benefits or greater than 2.5 percent of the small entity’s total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. At present, 32 OCC-supervised small entities constitute a substantial number. Therefore, the final rule will potentially affect a substantial number of OCC-supervised small entities in any given year.

However, based on the thresholds for a significant economic impact, the OCC expects that, if implemented, the final rule will not have a significant economic impact on any small entities. For these reasons, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act)⁵¹ requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation, currently \$183 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act⁵² also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC estimates that the annual aggregate cost of the final rule once fully phased in will be *de minimis*. Furthermore, the rule’s changes are not new substantive or information requirements for OCC-supervised institutions but rather describe

⁴⁸ 5 U.S.C. 601 *et seq.*

⁴⁹ Based on data accessed using FINDRS on August 18, 2024.

⁵⁰ The estimate of the number of small entities is based on the SBA’s size thresholds for commercial banks and savings institutions, and trust companies, which are \$850 million and \$47 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2023, to determine size because

⁵¹ 2 U.S.C. 1532.

⁵² 2 U.S.C. 1535.

considerations and principles that guide the OCC's review of applications under the BMA. Therefore, the OCC concludes that the final rule will not result in an expenditure of \$183 million or more annually by State, local, and Tribal governments or by the private sector.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCRDIA) of 1994⁵³ in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions, and (2) the benefits of the final rule. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.⁵⁴ The OCC considered the changes made by this final rule and believes that the effective date of January 1, 2025, will provide OCC-regulated institutions with adequate time to comply with the rule. The final rule will not impose any new administrative compliance requirements, and the administrative burdens from the removal of the Streamlined Application are *de minimis*.

E. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a "major rule."⁵⁵ If a rule is deemed a "major rule" by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.⁵⁶

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of

the OMB finds has resulted in or is likely to result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.⁵⁷

As required by the Congressional Review Act, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, OCC amends 12 CFR part 5 as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

- 1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 35, 93a, 214a, 215, 215a, 215a–1, 215a–2, 215a–3, 215c, 371d, 481, 1462a, 1463, 1464, 1817(j), 1831i, 1831u, 2901 *et seq.*, 3101 *et seq.*, 3907, and 5412(b)(2)(B).

§ 5.33 [Amended]

- 2. Section 5.33 is amended by removing and reserving paragraphs (d)(3), (i), and (j).
- 3. Add appendix A to subpart C to read as follows:

Appendix A to Subpart C of Part 5—Policy Statement Regarding Statutory

Factors Under the Bank Merger Act

I. Introduction

The purpose of this policy statement is to provide insured depository institutions (institutions) and the public with a better understanding of how the Office of the Comptroller of the Currency (OCC) considers certain statutory factors under the Bank Merger Act (BMA), 12 U.S.C. 1828(c). The matters discussed in this statement are intended to provide greater transparency, facilitate interagency coordination, and enhance public engagement.

II. General Principles of OCC Review

The OCC aims to act promptly on all applications. The agency's range of potential actions on applications includes approval,

denial, and requesting that an applicant withdraw the application because any shortcomings are unlikely to be resolved in a timely manner. Applications that tend to withstand scrutiny more easily and are more likely to be approved expeditiously generally feature all of the following indicators:

1. The acquirer is well capitalized under § 5.3, and the resulting institution will be well capitalized;
2. The resulting institution will have total assets less than \$50 billion;
3. The acquirer has a Community Reinvestment Act (CRA) rating of Outstanding or Satisfactory;
4. The acquirer has a composite and management ratings of 1 or 2 under the Uniform Financial Institution Ratings System (UFIRS) or ROCA rating system;
5. The acquirer has a consumer compliance rating of 1 or 2 under the Uniform Interagency Consumer Compliance Rating System (CC Rating System), if applicable;
6. The acquirer has no open formal or informal enforcement actions;
7. The acquirer has no open or pending fair lending actions, including referrals or notifications to other agencies;
8. The acquirer is effective in combatting money laundering activities;
9. The target's total assets are less than or equal to 50% of acquirer's total assets;
10. The target is an eligible depository institution as defined in § 5.3;
11. The proposed transaction clearly would not have a significant adverse effect on competition;
12. The OCC has not identified a significant legal or policy issue; and
13. No adverse comment has raised a significant CRA or consumer compliance concern.

If certain indicators that raise supervisory or regulatory concerns are present, the OCC is unlikely to find that the statutory factors under the BMA are consistent with approval unless and until the applicant has adequately addressed or remediated the concern. The following are examples of indicators that raise supervisory or regulatory concerns:

1. The acquirer has a CRA rating of Needs to Improve or Substantial Noncompliance.
2. The acquirer has a consumer compliance rating of 3 or worse.
3. The acquirer has UFIRS or ROCA composite or management ratings of 3 or worse or the most recent report of examination otherwise indicates that the acquirer is not financially sound or well managed.
4. The acquirer is a global systemically important banking organization or subsidiary thereof.
5. The acquirer has open or pending Bank Secrecy Act/Anti-money Laundering, fair lending, or consumer compliance actions, including enforcement actions, referrals, or notifications to other agencies.
6. The acquirer has failed to adopt, implement, and adhere to all the corrective actions required by a formal enforcement action in a timely manner, or there have been multiple enforcement actions against the acquirer executed or outstanding during a three-year period.

⁵³ 12 U.S.C. 4802(a).

⁵⁴ 12 U.S.C. 4802(b).

⁵⁵ 5 U.S.C. 801 *et seq.*

⁵⁶ 5 U.S.C. 801(a)(3).

⁵⁷ 5 U.S.C. 804(2).

III. Financial Stability

A. Factors Considered

The BMA requires the OCC to consider “the risk to the stability of the United States banking or financial system” when reviewing transactions subject to the Act. In reviewing a BMA application under this factor, the OCC considers the following factors:

1. Whether the proposed transaction would result in a material increase in risks to financial system stability due to an increase in size of the combining institutions.

2. Whether the proposed transaction would result in a reduction in the availability of substitute providers for the services offered by the combining institutions.

3. Whether the resulting institution would engage in any business activities or participate in markets in a manner that, in the event of financial distress of the resulting institution, would cause significant risks to other institutions.

4. Whether the proposed transaction would materially increase the extent to which the combining institutions contribute to the complexity of the financial system.

5. Whether the proposed transaction would materially increase the extent of cross-border activities of the combining institutions.

6. Whether the proposed transaction would increase the relative degree of difficulty of resolving or winding up the resulting institution’s business in the event of failure or insolvency.

7. Any other factors that could indicate that the transaction poses a risk to the U.S. banking or financial system.

B. Balancing Test

1. *In general:* The OCC applies a balancing test when considering the factors in section III.A. of this appendix in light of all the facts and circumstances available regarding the proposed transaction, including weighing the financial stability risk posed by the proposed transaction against the financial stability risk posed by denial of the proposed transaction, particularly if the proposed transaction involves a troubled target. The OCC considers each factor both individually and in combination with others. Even if only a single factor indicates that the proposed transaction would pose a risk to the stability of the U.S. banking or financial system, the OCC may determine that there would be an adverse effect of the proposal on the stability of the U.S. banking or financial system. Finally, the OCC also considers whether the proposed transaction would provide any stability benefits and whether enhanced prudential standards applicable as a result of the proposed transaction would offset any potential risks.

2. *Conditions:* The OCC’s review of the financial stability factors will include, as appropriate, whether to impose conditions on approval of the transaction. The OCC may impose conditions, enforceable under 12 U.S.C. 1818, to address and mitigate financial stability risk concerns, such as requiring asset divestitures by the resulting institution, imposing higher minimum capital requirements, or imposing other financial stability-related conditions.

3. *Recovery planning and heightened standards:* The OCC’s review of the financial

stability factors will consider the impact of the proposed transaction in light of:

b. Standards applicable to the resulting institution pursuant to 12 CFR part 30, appendix D, “OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches”; and

c. Standards applicable to the resulting institution’s recovery planning pursuant to 12 CFR part 30, appendix E, “OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches”.

4. *Concurrent filings:* the OCC’s review of the financial stability factors may consider the facts, circumstances, and representations of concurrent filings for related transactions, including the impact of the related transactions to the proposed transaction under review by the OCC.

IV. Financial and Managerial Resources and Future Prospects

The OCC is required by the BMA to consider the managerial resources, financial resources, and future prospects of the combining and the resulting institutions. The OCC considers each of these factors independently for both the combining and resulting institutions. However, because these factors are directly related to one another, the OCC also considers these factors holistically.

A. Overarching Considerations

1. The OCC tailors its consideration of the financial and managerial resources and future prospects of the combining and resulting institutions to their size, complexity, and risk profile.

2. The OCC considers these factors within the context of the prevailing economic and operating environment.

3. The OCC is more likely to approve combinations where the acquirer has sufficient financial and managerial resources to ensure safe and sound operations of the resulting institution than when:

a. The acquirer has a less than satisfactory supervisory record, including its financial and managerial resources;

b. The acquirer has experienced rapid growth;

c. The acquirer has engaged in multiple acquisitions with overlapping integration periods;

d. The acquirer has failed to comply with conditions imposed in prior OCC licensing decisions; or

e. The acquirer is functionally the target in the transaction.

4. The OCC normally does not approve a combination that would result in a depository institution with less than adequate capital or liquidity, less than satisfactory management, or poor earnings prospects.

5. The OCC considers all comments received on proposed business combinations. However, the OCC’s consideration of an institution’s financial and managerial resources and future prospects are necessarily based on confidential supervisory

information. While the OCC will provide an appropriate discussion of comments pertaining to the financial resources, managerial resources, and future prospects factors, it will generally not discuss or otherwise disclose confidential supervisory information in public decision letters.

B. Individual Factors

1. Financial Resources:

a. The OCC reviews the existing and proposed institutions’ current and pro forma capital levels.

i. The OCC reviews for compliance with the applicable capital ratios required by 12 CFR part 3 and the Prompt Corrective Action capital categories established by 12 CFR 6.4.

ii. The OCC may not approve a combination application filed by an insured depository institution that is undercapitalized as defined in 12 CFR 6.4 unless it has approved the institution’s capital restoration plan or the Board of Directors of the Federal Deposit Insurance Corporation has determined that the transaction would fulfill the purposes of 12 U.S.C. 1831o.

b. The OCC closely scrutinizes transactions that increase the risk to the bank’s financial condition and resilience, including bank capital, liquidity, and earnings, that can arise from any of the eight categories of risk included in the OCC’s Risk Assessment System: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation.

c. In relation to the financial resources factor, the OCC considers management’s ability to address increased risks that would result from the transaction.

d. A transaction involving an acquirer with a strong supervisory record relative to capital, liquidity, and earnings is more likely to satisfy the review factors. By contrast, a transaction involving an acquirer with a recent less than satisfactory financial or supervisory record is less likely to satisfy this factor.

2. *Managerial Resources:* The OCC considers several factors when considering the managerial resources of the institutions.

a. The OCC considers the supervisory record and current condition of both the acquirer and target to determine if the resulting institutions will have sufficient managerial resources to manage the resulting institution.

i. A significant number of MRAs suggests there may be insufficient managerial resources. Additionally, the OCC considers both institutions’ management ratings under the UFIRS or ROCA system and component ratings under the CC Rating System, Uniform Rating System for Information Technology, and Uniform Interagency Trust Rating System, as applicable.

ii. When applicable, the OCC also considers the relevant Risk Assessment System (RAS) conclusions for the combining institutions.

iii. The OCC considers the context in which a rating or RAS element was assigned and any additional information resulting from ongoing supervision.

iv. Less than satisfactory ratings at the target do not preclude the approval of a

transaction provided that the acquirer can employ sufficiently robust risk management and financial resources to correct the weaknesses at the target.

b. The OCC considers whether the acquirer has conducted sufficient due diligence of the target depository institution to understand the business model, systems compatibility, and weaknesses of the target. To facilitate the OCC's review, the acquirer's management team should demonstrate its plans and ability to address the acquirer's previously identified weaknesses, remediate the target's weaknesses, and exercise appropriate risk management for the size, complexity, and risk profile of the resulting institution.

c. The OCC also considers the acquirer's analysis and plans to integrate the combining institutions' operations, including systems and information security processes, products, services, employees, and cultures. The OCC's consideration and degree of scrutiny reflects the applicant's track record with information technology governance, business continuity resilience, and, as applicable, integrating acquisitions.

d. The OCC considers the acquirer's plans to identify and manage systems compatibility and integration issues, such as information technology compatibility and the implications for business continuity resilience. Any combination in which the OCC identifies systems integration concerns may lead to additional review.

i. A critical component of these plans includes the acquirer's identification and assessment of overreliance on manual controls, strategies for automating critical processes, and the strategies and capacity for modernization of aging and legacy information technology systems.

ii. The OCC may impose conditions, enforceable pursuant to 12 U.S.C. 1818, if it determines that information technology systems compatibility and integration represent a supervisory significant concern. These conditions may include requirements and time frames for specific remedial actions and specific measures for assessing and evaluating the depository institution's systems integration progress.

iii. The OCC may deny the application if the integration issues or other issues present significant supervisory concerns, and the issues cannot be resolved through appropriate conditions or otherwise.

e. The OCC also considers the proposed governance structure of the resulting institution. This includes governance in decision-making processes, the board management oversight structure, and the risk management system, including change management. This also includes expansion of existing activities, introduction of new or more complex products or lines of business, and implications for managing existing and acquired subsidiaries and equity investments. When applicable, the resulting institution's governance is also considered in the context of the institution's relationship with its holding company and the scope of the holding company's activities.

3. Future Prospects:

a. The OCC considers the resulting institution's future prospects in light of its assessment of the institutions' financial and managerial resources.

b. The OCC also considers the proposed operations of the resulting institution. The OCC's consideration and degree of scrutiny reflects the acquirer's record of integrating acquisitions.

i. The OCC considers whether the integration of the combining institutions would allow it to function effectively as a single unit.

ii. The OCC considers the resulting institution's business plan or strategy and management's ability to implement it in a safe and sound manner.

iii. The OCC also considers the combination's potential impact on the resulting institution's continuity planning and operational resilience.

V. Convenience and Needs

A. The OCC considers the probable effects of the proposed business combination on the community to be served. Review of the convenience and needs factor is prospective and considers the likely impact on the community of the resulting institution after the transaction is consummated, including but not limited to:

1. Any plans to close, consolidate, limit, or expand branches or branching services, including in low- or moderate-income (LMI) areas;

2. Any plans to reduce the availability or increase the cost of banking services or products, or plans to provide expanded or less costly banking services or products to the community;

3. Any plans to maintain, reduce, or improve credit availability throughout the community, including, for example, access to home mortgage, consumer, small business, and small farm loans;

4. Job losses or reduced job opportunities from branch staffing changes, including branch closures or consolidations;

5. Community investment or development initiatives, including, for example, community reinvestment, community development investment, and community outreach and engagement strategies; and

6. Efforts to support affordable housing initiatives and small businesses.

B. The OCC considers comments received during the comment period and information provided during any public hearing or meeting related to the proposed business combination. To the extent public comments or discussions address issues involving confidential supervisory information, however, the OCC generally will not discuss or otherwise disclose that confidential supervisory information in public decision letters and forums.

C. The OCC considers the CRA record of performance of an applicant in evaluating a business combination application. The OCC's forward-looking evaluation of the convenience and needs factor under the BMA is separate and distinct from its consideration of the CRA record of performance of an applicant in helping to meet the credit needs of the relevant community, including LMI neighborhoods.

VI. Public Comment Period and Public Meetings

A. Public Comment Period

1. Unless an exception applies, a combination under the BMA is subject to a 30-day comment period following publication of the notice of the proposed combination. The OCC may extend the comment period in certain instances:

a. When a filer fails to file all required publicly available information on a timely basis or makes a request for confidential treatment not granted by the OCC;

b. When requested and the OCC determines that additional time is necessary to develop factual information necessary to consider the filing; and

c. When the OCC determines that other extenuating circumstances exist.

2. The OCC may find that additional time is necessary to develop factual information if a filer's response to a comment does not fully address the matters raised in the comment, and the commenter requests an opportunity to respond.

3. Examples of extenuating circumstances necessitating an extension include:

a. Transactions in which public meetings are held to allow for public comment after the meeting;

b. Unusual transactions (*e.g.*, novel or complex transactions); and

c. Natural or other disasters occurring in geographic regions affecting the public's ability to timely submit comments.

B. Public Meetings

1. While the BMA does not require the OCC to hold meetings or hearings, the OCC has three methods for seeking oral input: (1) public hearing, (2) public meeting, and (3) private meeting. Public meetings are the most-employed public option.

2. The OCC will balance the public's interest in the transaction with the value or harm of a public meeting to the decision-making process (*e.g.*, although there may be increased public interest in a transaction, a public meeting will not be held if it would not inform the OCC's decision on an application or would otherwise harm the decision-making process).

3. Criteria informing the OCC's decision on whether to hold public meetings include:

a. The extent of public interest in the proposed transaction.

b. Whether a public meeting is appropriate in order to document or clarify issues presented by a particular transaction based on issues the public raises during the public comment process.

c. Whether a public meeting would provide useful information that the OCC would not otherwise be able to obtain in writing.

d. The significance of the transaction to the banking industry. Relevant considerations may include the asset sizes of the institutions involved (*e.g.*, resulting institution will have \$50 billion or more in total assets) and concentration of the resulting institution in one or more markets.

e. The significance of the transaction to the communities affected. Relevant considerations may include the effects of the transaction on the convenience and needs of

the community to be served, including a consideration of a bank's CRA strategy and the extent to which the acquirer and target are currently serving the convenience and needs of their communities.

f. The acquirer's and target's CRA, consumer compliance, fair lending, and other pertinent supervisory records, as applicable.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2024–21560 Filed 9–24–24; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–183]

RIN 7100 AG–80

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (“Board”) has adopted final amendments to its Regulation A to reflect the Board’s approval of a decrease in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board’s primary credit rate action.

DATES:

Effective date: This rule (amendments to part 201 (Regulation A)) is effective September 25, 2024.

Applicability date: The rate changes for primary and secondary credit were applicable on September 19, 2024.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Heather Ford, Group Manager (202–452–3674), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the

primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On September 18, 2024, the Board voted to approve a 0.50 percentage point decrease in the primary credit rate, thereby decreasing the primary credit rate from 5.50 percent to 5.00 percent. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate decreased by 0.50 percentage points as a result of the Board’s primary credit rate action, thereby decreasing the secondary credit rate from 6.00 percent to 5.50 percent. The amendments to Regulation A reflect these rate changes.

The 0.50 percentage point decrease in the primary credit rate was associated with a 0.50 percentage point decrease in the target range for the federal funds rate (from a target range of 5¼ percent to 5½ percent to a target range of 4¾ percent to 5 percent) announced by the Federal Open Market Committee on September 18, 2024, as described in the Board’s amendment of its Regulation D published elsewhere in today’s **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (“APA”) ¹ imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule’s content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be “unnecessary, impracticable, or contrary to the public interest.” ² Section 553(d) of the APA also provides that publication at least 30 days prior to a rule’s effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule. ³ The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply “to the extent that there is

involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” ⁴

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board’s action in responding to economic data and conditions, the Board has determined that “good cause” exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (“RFA”) does not apply to a rulemaking where a general notice of proposed rulemaking is not required. ⁵ As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (“PRA”) of 1995, ⁶ the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II as follows:

⁴ 5 U.S.C. 553(a)(2).

⁵ 5 U.S.C. 603, 604.

⁶ 44 U.S.C. 3506; see 5 CFR part 1320, appendix A.1.

¹ 5 U.S.C. 551 *et seq.*

² 5 U.S.C. 553(b)(3)(A).

³ 5 U.S.C. 553(d).

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.³

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 5.00 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 5.50 percent.

* * * * *

³ The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,
Secretary of the Board.

[FR Doc. 2024–21908 Filed 9–24–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1840]

RIN 7100–AG 81

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (“Board”) has adopted final amendments to its Regulation D to revise the rate of interest paid on balances (“IORB”) maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 4.9 percent, a 0.5 percentage point decrease from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (“FOMC” or “Committee”).

DATES:

Effective date: This rule (amendments to part 204 (Regulation D)) is effective September 25, 2024.

Applicability date: The IORB rate change was applicable on September 19, 2024.

FOR FURTHER INFORMATION CONTACT: M. Benjamin Snodgrass, Senior Counsel (202–263–4877), Legal Division, or Heather Ford, Group Manager (202–452–3674); for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services, please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (“Act”) imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.¹ Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (“Reserve Bank”).² Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.³ Institutions that are eligible to receive earnings on their balances held at Reserve Banks (“eligible institutions”) include depository institutions and certain other institutions.⁴ Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.⁵ Prior to these amendments, Regulation D established IORB at 5.4 percent.⁶

II. Amendment to IORB

The Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 4.9 percent. The amendment represents a 0.5 percentage point decrease in IORB. This decision was announced on September 18, 2024, with an effective date of September 19, 2024, in the

Federal Reserve Implementation Note that accompanied the FOMC’s statement on September 18, 2024. The FOMC statement stated that the Committee decided to lower the target range for the federal funds rate to 4¾ to 5 percent.

The Federal Reserve Implementation Note stated:

The Board of Governors of the Federal Reserve System voted unanimously to lower the interest rate paid on reserve balances to 4.9 percent, effective September 19, 2024.

As a result, the Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 4.9 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (“APA”) ⁷ imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule’s content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be “unnecessary, impracticable, or contrary to the public interest.” ⁸ Section 553(d) of the APA also provides that publication at least 30 days prior to a rule’s effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.⁹

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate change for IORB that is reflected in the final amendment to Regulation D was made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board’s action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a

¹ 12 U.S.C. 461(b). In March 2020, the Board set all reserve requirement ratios to zero percent. See Interim Final Rule, 85 FR 16525 (Mar. 24, 2020); Final Rule, 86 FR 8853 (Feb. 10, 2021).

² 12 CFR 204.5(a)(1).

³ 12 U.S.C. 461(b)(1)(A) and (b)(12)(A).

⁴ See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

⁵ See 12 U.S.C. 461(b)(12)(B).

⁶ See 12 CFR 204.10(b)(1).

⁷ 5 U.S.C. 551 *et seq.*

⁸ 5 U.S.C. 553(b)(3)(A).

⁹ 5 U.S.C. 553(d).

delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to this final amendment to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA") does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹⁰ As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act ("PRA") of 1995,¹¹ the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(1) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate ("IORB rate") on a day multiplied by the total balances maintained on that day. The IORB rate is 4.9 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–21909 Filed 9–24–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1007; Project Identifier MCAI–2023–01249–T; Amendment 39–22823; AD 2024–16–17]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–13–11, which applied to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–13–11 required revising the existing airplane flight manual (AFM) for airplanes equipped with affected flight control units (FCUs) and replacing any affected FCU with a serviceable FCU. This AD was prompted by reports of inadvertent auto flight system (AFS) altitude changes on the FCU; an investigation revealed that, depending on the ring selection, failure of the ALT knob on the FCU could change the target altitude. This AD continues to require certain actions in AD 2022–13–11, including replacing any affected FCU with a serviceable FCU, expands the requirement to revise the existing AFM for all airplanes, and prohibits the installation of affected parts; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 30, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 30, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1007; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and

other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1007.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022–13–11, Amendment 39–22097 (87 FR 39741, July 5, 2022) (AD 2022–13–11). AD 2022–13–11 applied to all Airbus SAS Model A350–941 and –1041 airplanes. AD 2022–13–11 was prompted by a report of inadvertent AFS altitude changes on the FCU; an investigation revealed that, depending on the ring selection, failure of the ALT knob on the FCU could change the target altitude. AD 2022–13–11 required revising the existing AFM to include a procedure on the use of the AFS control panel ALT knob. AD 2022–13–11 also required replacing any affected FCU with a serviceable FCU, which would terminate the AFM revision following that replacement. The FAA issued AD 2022–13–11 to address erroneous target altitude during descent, climb, or go-around, which could result in an unexpected vertical trajectory deviation and loss of correct situational awareness that could potentially result in uncontrolled impact with the ground.

The NPRM published in the **Federal Register** on April 23, 2024 (89 FR 30281). The NPRM was prompted by AD 2023–0215, dated December 11, 2023; corrected December 13, 2023; issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0215) (also referred to as the MCAI). The

¹⁰ 5 U.S.C. 603, 604.

¹¹ 44 U.S.C. 3506; see 5 CFR part 1320 Appendix A.1.

MCAI states that since EASA AD 2021–0260, dated November 18, 2021 (EASA AD 2021–0260), was issued, several operators reported additional incidents of inadvertent AFS altitude changes on airplanes equipped with serviceable FCUs. Airbus is investigating the cause of these reported events and, as a precautionary measure, expanded the applicability of the AFM Temporary Revision (TR) 121, Issue 1, to all airplanes, including those equipped with serviceable FCUs. For the reasons described above, EASA AD 2023–0215 partially retains the requirements of EASA AD 2021–0260, which is superseded, and requires amendment of the applicable AFM by incorporating AFM TR 121, Issue 1, for airplanes equipped with serviceable FCUs. EASA AD 2023–0215 is still considered to be an interim action, and further EASA AD action may follow.

In the NPRM, the FAA proposed to continue to require certain actions in AD 2022–13–11, including replacing any affected FCU with a serviceable FCU, as specified in EASA AD 2023–0215. The NPRM also proposed to require expanding the applicability of the requirement to revise the existing AFM to all Model A350–941 and –1041 airplanes, including those equipped with serviceable FCUs, as specified in EASA AD 2023–0215. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address erroneous target altitude during descent, climb, or go-around, which could result in an unexpected vertical trajectory deviation and loss of correct situational awareness that could potentially result in uncontrolled impact with the ground.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1007.

Discussion of Final Airworthiness Directive
Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA), who supported the NPRM without change. The FAA received an additional comment from Delta Air Lines (Delta). The following presents the comment received on the NPRM and the FAA’s response to the comment.

Request To Extend Compliance Time for Replacement of Affected FCUs

Delta requested that a new exception be added to paragraph (h) of the proposed AD to extend the compliance time for the replacement of affected FCUs from 25 months to 32 months, due to lack of parts availability. Delta pointed out that it is currently the only U.S. operator affected by AD 2022–13–11 and that Thales, the FCU manufacturer, focused on providing serviceable FCUs to European operators first, since EASA AD 2021–0260 was required to be accomplished sooner than AD 2022–13–11. Delta asserted that this resulted in Delta losing approximately 17 months of the time needed to accomplish the required replacement and therefore, requested the additional 7-month extension. Additionally, Delta pointed out that the replacement is secondary to the requirement to amend the AFM, which affects both serviceable and affected FCUs. Because the compliance time for the AFM amendment is retained as proposed, Delta maintained that an adequate level of safety is provided during the requested extension of the compliance time for replacing the affected FCUs.

The FAA does not agree to extend the compliance time for replacing the affected FCUs. Delta did not provide enough justification to support an extension of the compliance time. In developing an appropriate compliance time for this action, the FAA considered the recommendations of the manufacturer, the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required replacement within a period of time that corresponds to the normal scheduled maintenance for most affected operators. According to EASA, as the State of Design, parts availability was taken into consideration during development of the compliance time, which was determined to be sufficient to allow for the replacement of the affected parts to address the entire global A350 fleet. In consideration of these items, the FAA has determined that the proposed compliance time will ensure an acceptable level of safety. However, under the provisions of paragraph (i)(1) of this AD, the FAA will

consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. Therefore, no change is necessary to this AD.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2023–0215 specifies procedures for revising the existing AFM to include a procedure on the use of the AFS control panel ALT knob for all Airbus SAS Model A350–941 and –1041 airplanes, including the airplanes equipped with serviceable FCUs part number (P/N) C31006AD01; and replacing any affected FCU having P/N C31006AC01 or C31006AB01 with a serviceable FCU having P/N C31006AD01. EASA AD 2023–0215 also prohibits the installation of affected parts.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Interim Action

The FAA considers that this AD is an interim action. The FAA anticipates that further AD action will follow.

Costs of Compliance

The FAA estimates that this AD affects 27 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 6 work-hours × \$85 per hour = \$510.	\$27,000	Up to \$27,510	Up to \$742,770.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:

- a. Removing Airworthiness Directive (AD) 2022–13–11, Amendment 39–22097 (87 FR 39741, July 5, 2022); and
- b. Adding the following new AD:

2024–16–17 Airbus SAS: Amendment 39–22823; Docket No. FAA–2024–1007; Project Identifier MCAI–2023–01249–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 30, 2024.

(b) Affected ADs

This AD replaces AD 2022–13–11, Amendment 39–22097 (87 FR 39741, July 5, 2022) (AD 2022–13–11).

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto Flight.

(e) Unsafe Condition

This AD was prompted by reports of inadvertent auto flight system (AFS) altitude changes on the flight control unit (FCU); an investigation revealed that, depending on the ring selection, failure of the ALT knob on the FCU could change the target altitude. The FAA is issuing this AD to address erroneous target altitude during descent, climb, or go-around, which could result in an unexpected vertical trajectory deviation and loss of correct situational awareness that could potentially result in uncontrolled impact with the ground.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0215, dated December 11, 2023; corrected December 13, 2023 (EASA AD 2023–0215).

(h) Exceptions to EASA AD 2023–0215

(1) Where EASA AD 2023–0215 refers to "02 December 2021 [the effective date of EASA AD 2021–0260, dated November 18, 2021]," this AD requires using August 9, 2022 (the effective date of AD 2022–13–11).

(2) Where EASA AD 2023–0215 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1) and (2) of EASA AD 2023–0215 specify to "inform all flight crews, and thereafter, operate the aeroplane accordingly," this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(4) The "Remarks" section of EASA AD 2023–0215 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0215, dated December 11, 2023; corrected dated December 13, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0215, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locationsoremailfr.inspection@nara.gov.

Issued on August 7, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–21799 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2024–0223; Project Identifier MCAI–2023–00996–T; Amendment 39–22821; AD 2024–16–15]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200, A330–200 freighter, A330–800, and A330–900 series airplanes; Model A330–301, –302, –303, –323, –342, and –343 airplanes; and Model A340–312 and –313 airplanes. This AD was prompted by reports of quality non-conformity on main landing gear (MLG) axles where the high velocity oxygen-fuel (HVOF) coating on the bearing journal runout areas had a coating that was thicker than allowable limits. This AD requires repetitive inspections of the affected parts (MLG axles) for any discrepancy, corrective actions, and eventual replacement of affected parts, and prohibits the installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 30, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 30, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0223; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email

ADs@easa.europa.eu; website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2024–0223.

FOR FURTHER INFORMATION CONTACT:

Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov*.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200, A330–200 freighter, A330–800, and A330–900 series airplanes; Model A330–301, –302, –303, –323, –342, and –343 airplanes; and Model A340–312 and –313 airplanes. The NPRM published in the **Federal Register** on February 12, 2024 (89 FR 9795). The NPRM was prompted by EASA AD 2023–0167, dated August 30, 2023 (EASA AD 2023–0167) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states there are reports of quality non-conformity on MLG axles where the HVOF coating on the bearing journal runout areas had a coating thicker than allowable limits. This over-thickness could lead to damage, cracking, or spalling of the protective coating, which could expose the base material and allow corrosion to develop. This condition, if not detected and corrected, could lead to a MLG axle failure, possibly resulting in a MLG collapse, with consequent damage to the airplane and injury to occupants.

In the NPRM, the FAA proposed to require repetitive inspections of the affected parts (MLG axles) for any discrepancy, corrective actions, and eventual replacement of affected parts, and to prohibit the installation of affected parts, as specified in EASA AD 2023–0167. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0223.

Discussion of Final Airworthiness Directive**Comments**

The FAA received comments from two commenters, Air Line Pilots Association, International (ALPA), and an anonymous commenter, who supported the NPRM without change.

The FAA received additional comments from Delta Air Lines. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for an Exception To Clarify Re-Installation of an Affected Part

Delta Air Lines (Delta) requested adding an exception to paragraph (h) of the proposed AD to clarify note 2 of EASA AD 2023–0167 regarding installation versus re-installation of affected parts. Delta requested that the exception state that if an assembly, including the bogie beam assembly, containing an affected part is removed and re-installed during a single maintenance visit, that action is not considered an installation as specified in paragraph (7) of EASA AD 2023–0167. Delta stated that note 2 of EASA AD 2023–0167 allows the MLG to be removed and re-installed during the same maintenance visit but does not address sub-assemblies containing affected parts.

The FAA agrees to add an exception to paragraph (h) of this AD to address reinstallation of assemblies, including bogie beam assemblies. As defined in EASA AD 2023–0167, the affected parts are MLG axles with certain part numbers and serial numbers. The MLG axle is installed in the MLG bogie beam assembly. Bogie beam assemblies with an affected axle may be removed and reinstalled on the MLG as a separate unit. Paragraph (7) of EASA AD 2023–0167 prohibits the installation of a MLG having an affected axle. Note 2 of EASA AD 2023–0167 allows removal of MLG having an affected axle and subsequent reinstallation of that MLG on the same airplane, accomplished during a single maintenance visit, which is not considered as an installation as specified in paragraph (7) of EASA AD 2023–0167. Since the bogie beam assembly, with an affected axle, may be removed and reinstalled on the MLG as a separate unit during a single maintenance visit, such reinstallation should also not be considered an installation as specified in paragraph (7) of EASA AD 2023–0167. Paragraph (h)(5) has been added to this AD accordingly.

Request for an Exception To Address Service Information Error

Delta requested an exception be added to paragraph (h) of the proposed AD to address an error in the service information referenced in EASA AD 2023–0167. Delta stated that a “Required for Compliance” (RC) step, paragraph 3.C.(1)(b)1a (in Task set A330–A–32–XX–3305–01000–93BA–A), specifies to “remove the cover protection of the affected axle,” but pointed out that a note advises against the removal of paint or zinc nickel to complete the inspection. Delta added that it asked Airbus for clarification and that Airbus confirmed that the paint or zinc nickel on the HVOF should not be removed, and that the step “remove the cover protection of the affected axle” should be deleted from the service information. Delta asserted that adding the exception to delete the step would eliminate the need to request an alternative method of compliance (AMOC) when the final AD is published.

The FAA agrees to add an exception to paragraph (h) of this AD to address the specified error in the procedures for a detailed inspection of the affected axle. The exception in paragraph (h)(6) of this AD has been added for the reasons described by Delta.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2023–0167 specifies, for certain airplanes, procedures for repetitive inspections of the affected parts (MLG axles) for any discrepancy (damage, cracking, or spalling of HVOF coating, or corrosion), doing corrective actions including obtaining and following repair instructions and replacement of affected parts. EASA AD 2023–0167 also prohibits the installation of affected parts, and installation of MLG having an affected part installed. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Part and serial number inspection.	0.5 work-hours × \$85 per hour = \$42.50 per airplane.	\$0	\$42.50	\$298.
Inspection of affected axle	Up to 16 work-hours × \$85 per hour = \$1,360 per axle, per inspection cycle.	0	Up to \$1,360 per axle, per inspection cycle.	Up to \$9,520 per axle, per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Repair	Up to 16 work-hours × \$85 per hour = \$1,360	\$0	\$1,360.
Axle replacement	Up to 88 work-hours × \$85 per hour = \$7,480	47,126	\$54,606.
Optional replacement of MLG	Up to 48 work-hours × \$85 per hour = \$4,080	(*)	Up to \$4,080.

* The FAA has received no definitive data on which to base the cost estimates for a replacement MLG. The parts cost must be obtained through SAFRAN.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA

with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order

13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a “significant regulatory action” under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–16–15 Airbus SAS: Amendment 39–22821; Docket No. FAA–2024–0223; Project Identifier MCAI–2023–00996–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 30, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

- (1) Model A330–201, –202, –203, –223, and –243 airplanes.
- (2) Model A330–223F and –243F airplanes.
- (3) Model A330–301, –302, –303, –323, –342, –343, –841, and –941 airplanes.
- (4) Model A340–312 and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of quality non-conformity on main landing gear (MLG) axles where the high velocity oxygen fuel (HVOF) coating on the bearing journal runout areas had excessive coating compared to the drawing limits. The FAA is issuing this AD to address damage, cracking, or spalling of the protective HVOF coating and exposure of the base material, which could allow corrosion to develop. The unsafe condition, if not addressed, could result in a MLG axle failure, possibly resulting in a MLG collapse, with consequent damage to the airplane and injury to occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0167, dated August 30, 2023 (EASA AD 2023–0167).

(h) Exceptions to EASA AD 2023–0167

(1) Where EASA AD 2023–0167 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2023–0167 specifies to inspect within 24 months after the part entry into service, this AD requires inspecting within 30 months after the part entry into service or 30 days after the effective date of this AD, whichever occurs later.

(3) Paragraph (3) of EASA AD 2023–0167 specifies “If, during any inspection as required by paragraph (1) of this AD, any discrepancy, as defined in the SB, is detected, before next flight, contact SAFRAN Landing Systems for approved corrective action instructions and, within the compliance time specified therein, accomplish those instructions accordingly. If no compliance time is identified in those instructions, accomplish the applicable corrective action(s) before next flight.” This AD, however, requires replacing that text with “If, during any inspection as required by paragraph (1) of this AD, any discrepancy, as defined in the SB, is detected, the discrepancy must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; Airbus SAS’s EASA Design Organization Approval (DOA); or SAFRAN Landing Systems’ DOA. If approved by the DOA, the approval must include the DOA-authorized signature.”

(4) This AD does not adopt the “Remarks” section of EASA AD 2023–0167.

(5) This AD requires replacing the text of Note 2 of EASA AD 2023–0167 with “Removal of an MLG or an assembly, including the bogie beam assembly, having an affected part installed from an aeroplane and subsequent reinstallation of that MLG or assembly, including the bogie beam assembly, on the same aeroplane, accomplished during a single maintenance visit, is not considered as installation as specified in paragraph (7) of this EASA AD.”

(6) Where the service information referenced in EASA AD 2023–0167 specifies to “remove the cover protection of the affected axle” prior to inspecting the affected part, this AD does not include that requirement.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0167 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; Airbus SAS’s EASA Design Organization Approval (DOA); or SAFRAN Landing System’s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraphs (h)(6), (i), and (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email vladimir.ulyanov@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0167, dated August 30, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0167, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on August 6, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–21797 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1304; Project Identifier MCAI–2023–01134–T; Amendment 39–22822; AD 2024–16–16]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–25–07, which applied to certain Embraer S.A. Model EMB–550 and EMB–545 airplanes. AD 2020–25–07 required repetitive inspections of the flight deck side windows for any cracking or delamination, corrective action if necessary, and eventual replacement of the windows. Since the FAA issued AD 2020–25–07, additional part numbers were added to the installation prohibition list. This AD continues to require the actions in AD 2020–25–07, expands the list of affected parts, and prohibits the installation of affected parts, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 30, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 30, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2024–1304; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information

(MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For ANAC material identified in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this material on the ANAC website sistemas.anac.gov.br/certificacao/DA/DAE.asp.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. FAA–2024–1304.

FOR FURTHER INFORMATION CONTACT:

Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3653; email Hassan.M.Ibrahim@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–25–07, Amendment 39–21349 (85 FR 81385, December 16, 2020) (AD 2020–25–07). AD 2020–25–07 applied to certain Embraer S.A. Model EMB–550 and EMB–545 airplanes. AD 2020–25–07 required repetitive inspections of the flight deck side windows for any cracking or delamination, corrective action if necessary, and eventual replacement of the windows. The FAA issued AD 2020–25–07 to address cracks and delamination, which could cause the flight deck side windows to fail and lead to an in-flight depressurization event.

The NPRM published in the **Federal Register** on May 17, 2024 (89 FR 43336). The NPRM was prompted by AD 2020–04–01R02, effective November 2, 2023, issued by ANAC, which is the aviation authority for Brazil (ANAC AD 2020–04–01R02) (also referred to as the MCAI). The MCAI states that part number (P/N) NP–200402–7 and P/N NP–200402–8, made mandatory by the previous revisions of the MCAI, have

not had the expected effect on the fleet as premature cracks in the outer layer of windows with P/N NP–200402–7 and P/N NP–200402–8 have been found. These cracks may be undetected, and the inner layer may be subjected to unpredicted loads for several flights, which could result in window failure and subsequent in-flight depressurization events.

In the NPRM, the FAA proposed to continue to require the actions in AD 2020–25–07, expand the list of affected parts, and prohibit the installation of affected parts, as specified in ANAC AD 2020–04–01R02. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2024–1304.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Additional Changes Made to This AD

The FAA revised paragraph (h)(5) of this AD to clarify that the 50 flight cycle grace period is “within 50 flight cycles after the effective date of this AD.” In the proposed AD, the FAA inadvertently omitted the wording “after the effective date of this AD.”

After the FAA issued the proposed AD, ANAC issued an Errata to ANAC AD 2020–04–01R02, effective November 2, 2023, to clarify the actions if an inspection is done and delamination or other damage which does not impact the ability to properly perform the inspection is found. As originally written, operators could have concluded a windshield needed to be replaced even if the only inspection finding was delamination in an area that did not impede the inspection. The FAA has revised paragraph (h)(3) of this AD to clarify the action for this condition.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is

adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

ANAC AD 2020-04-01R02 specifies procedures for initial and repetitive detailed inspections of the left-hand flight deck side window P/N NP-200402-1 or P/N NP-200402-5 and right-hand flight deck side window P/N NP-200402-2 or P/N NP-200402-6 to

detect cracks, delamination, or any other damage (such as scratches, chipping, erosion, and crazing), and replacement of the windows with a new window P/N NP-200402-9 or P/N NP-200402-10, as applicable. ANAC AD 2020-04-01R02 also prohibits the installation of flight deck side windows with P/N NP-200402-1, P/N NP-200402-2, P/N NP-200402-5, P/N NP-200402-6, P/N NP-200402-7, and P/N NP-200402-8, on any airplane.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

Costs of Compliance

The FAA estimates that this AD affects 44 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2020-25-07.	1 work-hour × \$85 per hour = \$85 per inspection cycle.	\$0	\$85 per inspection cycle	\$3,740 per inspection cycle.

The FAA estimates the following costs to do any necessary on-condition action that would be required based on

the results of any required actions. The FAA has no way of determining the

number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per window
15 work-hours × \$85 per hour = \$1,275	\$21,636	\$22,911

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive 2020-25-07, Amendment 39-21349 (85 FR 81385, December 16, 2020); and
 - b. Adding the following new Airworthiness Directive:

2024-16-16 Embraer S.A.: Amendment 39-22822; Docket No. FAA-2024-1304; Project Identifier MCAI-2023-01134-T.

(a) Effective Date

This airworthiness directive (AD) is effective October 30, 2024.

(b) Affected ADs

This AD replaces AD 2020-25-07, Amendment 39-21349 (85 FR 81385, December 16, 2020) (AD 2020-25-07).

(c) Applicability

This AD applies to Embraer S.A. Model EMB-550 and EMB-545 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) AD 2020-04-01R02, effective November 2, 2023 (ANAC AD 2020-04-01R02).

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD was prompted by reports of cracks, delamination, and failure of the flight deck side windows during certification fatigue tests. The FAA is issuing this AD to address such cracks and delamination, and any other damage of the flight deck side windows. The unsafe condition, if not addressed, could result in flight deck side windows to fail and lead to an in-flight depressurization event.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2020-04-01R02.

(h) Exceptions to ANAC AD 2020-04-01R02

(1) Where ANAC AD 2020-04-01R02 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (b)(1) of ANAC AD 2020-04-01R02 refers to April 17, 2020 (the effective date of the original issue of ANAC AD 2020-04-01), this AD requires using January 21, 2021 (the effective date of AD 2020-25-07).

(3) Where paragraph (b)(1)(iii) of ANAC AD 2020-04-01R02 specifies “In case of no crack, delamination, or any other damage, no action is required at this time,” this AD requires replacing that text with “in the case of no findings specified in paragraphs (b)(1)(i) and (ii) of ANAC AD 2020-04-01R02, no further action is required by this AD until the next inspection interval.”

(4) Where paragraph (b)(2) of ANAC AD 2020-04-01R02 refers to the compliance time of the repetitive inspections, “at each 750 Flight Hours (FH),” this AD requires replacing that text with “at intervals not to exceed 750 flight hours.”

(5) Where paragraph (c) of ANAC AD 2020-04-01R02 refers to the compliance time for the replacement of the flight deck side windows as, “before the airplane logs 3,400 Flight Cycles Since New (FCSN),” this AD requires replacing that text with “before the airplane logs 3,400 FCSN, or within 50 flight cycles after the effective date of this AD, whichever occurs later.”

(6) Replacement of the flight deck side windows as specified in paragraph (c) of ANAC AD 2020-04-01R02 terminates the repetitive inspections for the flight deck side windows specified in paragraph (b)(2) of ANAC AD 2020-04-01R02.

(7) This AD does not adopt paragraph (e) of ANAC AD 2020-04-01R02.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to

approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(j) Additional Information

For more information about this AD, contact Hassan Ibrahim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3653; email Hassan.M.Ibrahim@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Agência Nacional de Aviação Civil (ANAC) AD 2020-04-01R02, effective November 2, 2023.

(ii) [Reserved]

(3) For ANAC material identified in this AD, contact ANAC, Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230-Centro Empresarial Aquarius-Torre B-Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246-190-São José dos Campos-SP, Brazil; telephone 55 (12) 3203-6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this ANAC AD on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locationsoremailfr.inspection@nara.gov.

Issued on September 19, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024-21853 Filed 9-24-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2024-1479; Project Identifier MCAI-2023-00657-T; Amendment 39-22824; AD 2024-16-18]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD-100-1A10 airplanes. This AD was prompted by a determination that a revised restrictive airworthiness limitation is necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate a revised restrictive airworthiness limitation for the aft engine mount attachment bolts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 30, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 30, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2024-1479; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For Bombardier material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-2999; email ac.yul@aero.bombardier.com; website aero.bombardier.com;

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2024-1479.

FOR FURTHER INFORMATION CONTACT:

Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-100-1A10 airplanes. The NPRM published in the **Federal Register** on June 5, 2024 (89 FR 48139). The NPRM was prompted by AD CF-2023-29, dated May 5, 2023, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that the time limits/maintenance check (TLMC) airworthiness limitation (AWL) Task 54-51-00-111*, “Discard of the Aft Engine Mount Bolts, Part No. MS21250-07, Non-Serialized,” was not performed on some Challenger 300 in-service airplanes due to a misleading part number (P/N) referenced in the TLMC manual. The task requires the discard and replacement of the aft engine mount attachment bolt, P/N MS21250-07, while the P/N shown in the TLMC manual is P/N MS21250-7 in lieu of P/N MS21250-07. Bombardier revised the TLMC AWL task and the relevant sections in the aircraft maintenance manual and the aircraft illustrated parts catalog with P/N MS21250-07 to ensure timely discard and replacement of the aft engine mount attachment bolts.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate a revised restrictive airworthiness limitation for the aft engine mount attachment bolts. The FAA is issuing this AD to address potential failures of the aft engine mount attachment bolt, P/N MS21250-07. The unsafe condition, if not addressed, could lead to the detachment of the engine from the airplane, which could contribute to a catastrophic failure.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1479.

Discussion of Final Airworthiness Directive**Comments**

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed the following documents. This material specifies a revised airworthiness limitation for the replacement of the aft engine mount attachment bolts, P/N MS21250-07. These documents are distinct since they apply to different airplane configurations. The asterisk (or “one star”) with the last three digits of the task numbers indicates that the task is an airworthiness limitation task.

- Task 54-51-00-111* “Discard of the Aft Engine Mount Bolts, Part No. MS21250-07, Non-Serialized,” Section 5-10-10 “Life Limits (Structures),” Part 2 “Airworthiness Limitations,” of the Bombardier Challenger 300 Time Limits/Maintenance Check, Publication No. CH 300 TLMC, Revision 24, dated August 9, 2023.
- Task 54-51-00-111* “Discard of the Aft Engine Mount Bolts, Part No. MS21250-07, Non-Serialized,” Section 5-10-10 “Life Limits (Structures),” Part 2 “Airworthiness Limitations,” of the Bombardier Challenger 350 Time Limits/Maintenance Check, Publication No. CH 350 TLMC, Revision 14, dated August 9, 2023.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 731 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since

operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2024–16–18 Bombardier, Inc.: Amendment 39–22824; Docket No. FAA–2024–1479; Project Identifier MCAI–2023–00657–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 30, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–100–1A10 airplanes, certificated in any category, having serial numbers (S/Ns) 20002 through 20912 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address potential failures of the aft engine mount attachment bolt, part number MS21250–07. The unsafe condition, if not addressed, could lead to the detachment of the engine from the airplane, which could contribute to a catastrophic failure.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in paragraphs (g)(1) and (2) of this AD, as applicable. The initial compliance time for doing the tasks is at the time specified in the applicable time limit/maintenance check (TLMC) document specified in paragraphs (g)(1) and (2) of this AD, or within 60 days after the effective date of this AD, whichever occurs later.

(1) For airplane S/Ns 20002 through 20500 inclusive: Task 54–51–00–111* “Discard of the Aft Engine Mount Bolts, Part No. MS21250–07, Non-Serialized,” Section 5–10–10 “Life Limits (Structures),” Part 2, “Airworthiness Limitations,” of the Bombardier Challenger 300 Time Limits/Maintenance Check, Publication No. CH 300 TLMC, Revision 24, dated August 9, 2023.

(2) For airplane S/Ns 20501 through 20912 inclusive: Task 54–51–00–111* “Discard of the Aft Engine Mount Bolts, Part No.

MS21250–07, Non-Serialized,” Section 5–10–10 “Life Limits (Structures),” Part 2 “Airworthiness Limitations,” of the Bombardier Challenger 350 Time Limits/Maintenance Check, Publication No. CH 350 TLMC, Revision 14, dated August 9, 2023.

Note 1 to paragraph (g): The asterisk (or “one star”) with the last three digits of the task numbers listed in paragraphs (g)(1) and (2) of this AD indicates that the task is an airworthiness limitation task.

(h) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals, are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-NYACO-COS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or Transport Canada; or Bombardier, Inc.’s, Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact Yaser Osman, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Task 54–51–00–111* “Discard of the Aft Engine Mount Bolts, Part No. MS21250–07, Non-Serialized,” Section 5–10–10 “Life Limits (Structures),” Part 2 “Airworthiness Limitations,” of the Bombardier Challenger 300 Time Limits/Maintenance Check, Publication No. CH 300 TLMC, Revision 24, dated August 9, 2023.

Note 2 to paragraph (k)(2)(i): The asterisk (or “one star”) with the last three digits of the task numbers listed in paragraphs (k)(2)(i) and (ii) of this AD indicates that the task is an airworthiness limitation task.

(ii) Task 54–51–00–111* “Discard of the Aft Engine Mount Bolts, Part No. MS21250–07, Non-Serialized,” Section 5–10–10 “Life Limits (Structures),” of Part 2 “Airworthiness Limitations,” of the Bombardier Challenger 350 Time Limits/Maintenance Check, Publication No. CH 350 TLMC, Revision 14, dated August 9, 2023.

(3) For Bombardier material identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email ac.yul@aero.bombardier.com; website bombardier.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on August 7, 2024.

Victor Wicklund,

Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–21807 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–13–P

SUSQUEHANNA RIVER BASIN COMMISSION**18 CFR Part 801****General Policies**

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains rules that amend the regulations of the Susquehanna River Basin Commission (Commission) to provide rules for agency procurement and bid protest procedures and for updating the general policies of the Commission to include climate change and environmental justice, revising the procedures regarding the adoption of the comprehensive plan and adding language to memorialize the Commission’s Dry Cooling Resolution.

DATES: This rule is effective September 25, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT:

Jason E. Oyler, Esq., General Counsel,

telephone: 717–238–0423, ext. 1312;
fax: 717–238–2436; email: joyler@
srbcb.gov.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register** on March 21, 2024; *New York Register* on April 10, 2024; *Pennsylvania Bulletin* on April 13, 2024; and *Maryland Register* on April 5, 2024. The Commission convened a public hearing on May 2, 2024, to hear testimony on the proposed rulemaking. A written comment period was held open to May 13 and extended upon request to June 10, 2024.

During this official public comment period, only one comment was received. The commenter focused exclusively on the language added to new paragraph (d) in § 801.12 regarding dry cooling and electric power generation. The commenter asked that the nuclear power industry be wholly exempted from this requirement, stating that the Commission's regulatory review regulations at part 806 fully covered the use of water and impacts of water use by industry and that dry cooling was not practicable for nuclear power plants. The commenter also noted that the Commission did not provide a definition of "significantly modified power generation plants" in the rulemaking.

The Commission will continue to require the power generation industry, including the nuclear power industry, to evaluate water use and utilize readily available technologies to reduce water use. The Commission believes that smaller nuclear power plants may be able to use dry cooling and hybrid dry cooling systems in the future. In light of the comment, the Commission does amend the original language proposed in paragraph (d) of § 801.12 to focus on the requirement that project sponsors of power generation plants must evaluate their projected water use and consider all available and feasible technologies, including but not limited to dry cooling, that could lower overall consumptive use of water. This change broadens the focus not just on dry cooling but also on other technologies that may be more feasible for the nuclear power industry as well as the power generation industry as a whole. The Commission also added clarity on what a "significantly modified power plant" would be in the context of this paragraph.

The Commission received no other comments on any other aspects of the proposed rule or part 801 and therefore made no additional changes to the language in this final rule.

List of Subjects in 18 CFR Part 801

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 801 as follows:

PART 801—GENERAL POLICIES

- 1. The authority citation for part 801 continues to read as follows:

Authority: Secs. 3.1, 3.4, 3.5(1), 15.1 and 15.2, Pub. L. 91–575 (84 Stat. 1509 *et seq.*)

- 2. Amend § 801.2 by revising paragraph (b)(9) to read as follows:

§ 801.2 Coordination, cooperation, and intergovernmental relations.

* * * * *

(b) * * *

(9) Coordinate and cooperate with the appropriate agencies of a member jurisdiction on implementing actions to address resiliency in the face of changing climatic conditions and to support the aims of environmental justice.

- 3. Revise § 801.5 to read as follows:

§ 801.5 Comprehensive plan.

(a) The Compact requires that the Commission formulate and adopt a comprehensive plan for the immediate and long-range development and use of the water resources of the basin.

(1) The plan will include existing and proposed public and private programs, projects, and facilities which are required, in the judgment of the Commission, to meet present and future water resources needs of the basin. Consideration shall be given to the effect of the plan, or any part of the plan, on the receiving waters of the Chesapeake Bay. The Commission shall consult with interested public bodies and public utilities and fully consider the findings and recommendations of the signatory parties, their various subdivisions and interested groups. Prior to adoption of the plan the Commission shall conduct at least one public hearing in each signatory State.

(2) The plan will reflect consideration of multiple objectives, including economic growth; sustainable regional development and environmental resilience; coordinated study and consideration of water quantity and water quality and the nexus with existing and proposed land uses; and the promotion of cooperation and collaboration between all levels of government and non-governmental entities.

(3) The Commission will strive to complete a comprehensive update of the

comprehensive plan every 20 years. If adjustments are needed during the life span of the plan to address emergent priorities, goals, or objectives, the comprehensive plan will be revised in accordance with requirements of the Compact.

(4) Projects requiring Commission review and approval will be included in the comprehensive plan after formal action is taken at Commission business meetings. Approved projects will be incorporated into the comprehensive plan and accessible via the Commission's Water Application and Approval Viewer or successor viewer applications.

(b) The comprehensive plan shall provide for the immediate and long-range use, development, conservation, preservation, and management of the water resources of the basin. The plan will be presented in a form and order as determined by the Commission and shall include but not be limited to the following:

(1) Statement of authority, purpose, objectives, and scope.

(2) Identification of priorities, goals, and objectives of the Commission.

(3) Inventory of the basin's water resources and existing developments, projects, and facilities.

(4) Projection of immediate and long-range water resources needs of the basin.

(5) Outline of plan implementation measures.

(6) Procedures for updating and modifying the plan.

(7) Necessary appendices.

- 4. Amend § 801.12 by adding paragraph (d) to read as follows:

§ 801.12 Electric power generation.

* * * * *

(d) Project sponsors proposing new or significantly modified power generation plants in the basin shall submit to the Commission for review an evaluation of their projected water use and consider all available and feasible technologies, including dry cooling, that could lower the consumptive use of water at the plant. For the purposes of this evaluation, a significantly modified power plant is one that is changing its fuel source or substantially increasing its consumptive use of water.

- 5. Add § 801.15 to read as follows:

§ 801.15 Commission Procurement Procedures; Protests.

(a) *Procedures.* The Commission shall maintain a policy entitled "SRBC Procurement Procedures" that outlines the details and procedures related to the purchasing and procurement of goods and services by the Commission. Any

revisions to this policy shall be consistent with section 15.9 of the Compact and undertaken in accordance with appropriate public notice and comment consistent with the requirements of § 808.1.

(b) *Right to protest.* A bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract, may protest to the Commission in writing.

(c) *Filing of protest.* A protestant shall file the protest on a form and in a manner prescribed by the Commission. A protest shall be filed within ten calendar days after the aggrieved protestant knew or should have known of the facts giving rise to the protest, except that in no event may a protest be filed later than ten calendar days after the date the contract was awarded. The failure to file a timely protest shall be deemed as a waiver of the right to protest by any bidder or offeror, prospective bidder or offeror or a prospective contractor. Untimely filed protests shall be disregarded by the Commission. The Executive Director or his/her designee shall be the presiding officer to hear the bid protest. The awardee of the contract, if any, will be informed by the Commission of any bid protest that may affect the contract and the awardee may intervene as a party in any protest filed.

(d) *Contents of protest.* A protest shall state all the grounds upon which the protestant asserts the solicitation or award of the contract was improper. The protestant may submit with the protest any documents or information it deems relevant to the protest.

(e) *Response and reply.* Within 15 calendar days of receipt of a protest, the purchasing officer may submit to the presiding officer and the protestant a response to the protest, including any documents or information deemed relevant to the protest. The protestant may file a reply to the response within ten calendar days of the response.

(f) *Evaluation of protest.* The presiding officer shall review the protest and any response or reply and may request and review such additional documents or information as they deem relevant to render a decision and may, at their sole discretion, conduct a hearing consistent with § 808.3 of this chapter. All parties will be provided with a reasonable opportunity to review and address any additional documents or information deemed relevant by the presiding officer to render a decision. Additional documents and information deemed relevant by the presiding officer will be included in the record.

(g) *Findings and report.* Upon completing an evaluation of the protest, the presiding officer shall prepare a report of their findings and recommendations based on the record. The report shall be served by electronic mail or certified mail upon each party to the proceeding. Any party may file objections to the report. Such objections to the report shall be filed with the Commission and served on all parties within 20 calendar days after service of the report. A brief shall be filed together with the objections. Any replies to the objections and briefs will be filed and served on all parties within ten calendar days of service of the objections. Prior to its decision on such objections, the Commission may, in its sole discretion, grant a request for oral argument.

(h) *Action by the Commission.* The Commission will review the findings and recommendations of the presiding officer and the objections and render a determination. The Commission's determination will be in writing and will be served by electronic or certified mail upon each party to the proceeding.

(i) *Appeal.* Any final action by the Commission may be appealed to the appropriate United States District Court within 90 days as set forth in section 3.10(6) and Federal reservation (o) of the Compact.

(j) *Record of determination.* The Commission's record of determination for review by the court shall consist of the solicitation; the contract, if any; the administrative record of the protest before the presiding officer; the report of the presiding officer, along with any objections and replies filed; transcripts and exhibits, if any; and the final determination of the Board of Commissioners.

(k) *Stay of procurement during pendency of protest.* In the event a protest is filed timely under this section, the purchasing officer shall not proceed further with the solicitation or with the award of the contract unless and until the Executive Director makes a written determination that the protest is clearly without merit, or that award of the contract without delay is necessary to protect substantial interests of the Commission, or until the Commission enters a final determination under paragraph (h) of this section.

(l) *Exclusive procedure.* This section shall be the exclusive procedure for protesting a solicitation or award of a contract by a bidder or offeror, a prospective bidder or offeror or a prospective contractor that is aggrieved in connection with the solicitation or award of a contract by the Commission.

Dated: September 18, 2024.

Jason E. Oyler,

Secretary to the Commission.

[FR Doc. 2024–21694 Filed 9–24–24; 8:45 am]

BILLING CODE 7040–01–P

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB68

Evidence of Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (RRB) amends its regulations regarding the submission of evidence in disability claims to require you to inform us or submit all evidence known to you that “relates to” your disability claim, with exceptions for privileged communications and duplicates. This requirement includes the duty to submit all evidence obtained from any source in its entirety, subject to one of these exceptions. These clarifications to our regulations describe in more detail the requirement for you to submit all evidence that relates to your disability claim, enables us to have a more complete case record which will allow us to make more accurate determinations of your disability status, and aligns our disability evidence requirements with regulations of the Social Security Administration (SSA).

DATES: This rule is effective November 25, 2024.

FOR FURTHER INFORMATION CONTACT: Peter J. Orlowicz, Senior Counsel, (312) 751–4922, TTD (312) 751–4701, Peter.Orlowicz@rrb.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

The RRB published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on November 9, 2016 (81 FR 78757). The preamble to the NPRM discussed the changes from our current rules and our reasons for proposing those changes. In the NPRM, we proposed to clarify our regulations to require you to inform us about or submit all evidence known to you that relates to your disability claim, subject to two exceptions for certain privileged communications. We explained that this requirement would include the duty to submit all evidence from any source in its entirety, unless subject to one of these exceptions. We also proposed to require your representative to help you obtain the information or evidence that

we would require you to submit under our regulations.

We provided 60 days for the public to comment on the NPRM. We received four comments: two comments were submitted anonymously, and two comments were from individual members of the public. All four comments focused on the requirement to submit all evidence that relates to an individual's disability claim. None of the four comments discussed the exceptions for material protected by attorney-client privilege or attorney work product doctrine. We provide summaries of the significant comments that were relevant to this rulemaking and our responses to those comments in Part II below. One comment was entirely supportive of the proposed changes. We appreciate that comment but have not summarized or responded to it below because it does not require a response.

In the process of reviewing the public comments to the NPRM, we independently determined that one change in the proposed rule would unintentionally increase the burden on us and on individuals claiming benefits to require development of a complete medical history covering at least the full 12 months prior to the application filing date, even when a fully favorable adjudication of the application is supported by medical evidence without development of the full 12 months of medical history. As explained in Part III below, we are modifying the final rule to keep existing language and eliminate this unintended effect. After carefully considering the public comments, we are otherwise adopting the proposed rule revisions without change.

II. Public Comments

Comment: One commenter advocated for a standardized form or template for medical sources to use when submitting medical evidence, to allow medical sources to simply fill out the form rather than write an opinion letter. The commenter also suggested that evidence should only consist of formal, official medical documents, not oral or unofficial written material. Finally, the commenter suggested the rule contain more explanation of the type of benefits a disabled employee can receive in the workplace.

Response: We did not adopt these suggestions. We disagree that a standardized form is needed for submitting medical evidence. The obligation to submit evidence described by this rule extends beyond opinion letters or medical source's assessments of an individual's capacity to work. Instead, medical evidence as described

in our regulations at 20 CFR 220.46 encompasses office and progress notes, prior medical history, clinical findings such as the results of physical and mental examinations, laboratory findings, diagnosis, prescribed treatment, and other types of evidence that would be maintained in a medical source's file, in addition to statements about the claimant's ability to work despite the claimant's impairment. These records may be generated and maintained by many different medical providers, each with their own electronic or manual medical record system. Requiring all providers to submit these widely varying types of evidence in a standardized common form would be much more burdensome on providers than simply accepting copies of the medical records as they are already maintained by the providers in a native format and increases the risk that important evidence might be omitted in the process of transcribing records from their native format into the standardized common form. Additionally, medical providers have already widely adopted the SOAP (Subjective, Objective, Assessment and Plan) structure for documenting health care, which promotes effective communication between medical providers by organizing the most important information in an easily recognizable way and an easy to find location.¹ This commonly used technique for organizing information in medical notes also assists our adjudicators to review medical evidence effectively even in the absence of a specific RRB-required form. In comparison to the burdens and risks imposed by requiring a specific RRB-required form, the gains in efficiency and ease of reviewing medical evidence in such a standardized common form are marginal and do not justify imposing such a requirement.

We also disagree that evidence must be contained in a formal or official document to be considered. The rule as proposed does not expand or restrict the existing definition of "evidence" for purposes of evaluating disability claims under the Railroad Retirement Act. Our regulations at § 220.46 explain we may use information from other sources to understand how an impairment affects a claimant's ability to work, including observations by nonmedical sources. For many of the same reasons explained above for why we decline to require a

standardized form for submitting medical evidence, we decline to impose a threshold requirement of formality on receiving and considering medical or nonmedical evidence. Although receiving such evidence in the form of formal written documents may be preferable in many circumstances, we will not reject or decline to consider evidence that is submitted merely because it is submitted in an oral or informal written manner.

Finally, we disagree with the need to explain more expansively what sort of benefits a disabled employee can receive in the workplace. The requirement to submit all evidence related to an individual's disability claim applies only to claims for disability under the Railroad Retirement Act for work in an employee's regular railroad occupation and disability under the Railroad Retirement Act for any regular employment. Other benefits that an employee may or may not be entitled to in connection with a disability are outside the scope of this rule and may not even be administered by the RRB. Therefore, such other benefits need not be addressed here.

Comment: One commenter criticized the existing regulations as not requiring claimants to provide evidence of age, education, work experience, or daily activities, and suggested requiring this evidence would reduce fraud.

Response: We believe this comment is based on an inaccurate factual premise, and the proposed rule need not be modified to address it. The existing regulation already provides that we may ask claimants to provide evidence about age, education, work experience, and daily activities when the facts of a specific case require it. While every claim for disability under the Railroad Retirement Act will require medical evidence to adjudicate the claim, not every claim will require all categories of vocational and other evidence articulated in the regulation. For example, when finding that an individual is medically disabled as explained in 20 CFR 220.110, we will not consider the individual's residual functional capacity, age, education, or work experience because those factors are not relevant to the determination. The proposed changes to 20 CFR 220.45 preserve our right to request necessary information about these non-medical factors when it is necessary to adjudicate a claim. This information is usually gathered initially as part of the application for disability, as approved by the Office of Management and Budget under control number 3220-0002. This collection has been approved without changes since 1990. The

¹ Podder V, Lew V, Ghassemzadeh S. SOAP Notes. [Updated 2023 Aug 28]. In: StatPearls [internet]. Treasure Island (FL): StatPearls Publishing; 2024 Jan-. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK482263/>.

changes proposed by the NPRM do not affect or modify that information collection. Therefore, we do not believe any changes to the proposed rule are required to address this concern.

Comment: One commenter criticized the proposed rule as creating an undue burden on disabled claimants by requiring submission of evidence that is not relevant to the determination of disability status. The commenter also stated requiring all known evidence to be submitted is more likely to necessitate additional investigation based on extraneous information. The commenter advocated for leaving the existing rule in place without changes.

Response: We disagree with the commenter. Unless the context indicates otherwise, we generally intend for the words we use in our regulations to be construed according to their ordinary meaning. In this rule, we intend for the word “relates” to have its ordinary meaning, which is to show or establish a logical or causal connection between two things. Although this meaning is broad and includes anything that has a logical or causal connection to the disability claim (including unfavorable evidence), evidence that is entirely irrelevant to the determination of disability would not “relate[s] to” the claimed disability. It is also important to note that we consider all of a claimant’s impairments for which we have evidence or may develop evidence, not just the ones alleged, and we consider the combined effect of all impairments.² We are also required, subject to certain exceptions, to develop a complete medical history for at least the 12 months preceding the date of the disability application.³ Therefore, evidence of treatment for conditions other than the one alleged by the claimant could relate to the disability claim. For example, if a claimant alleged a back impairment, the treatment records from health care providers other than the treating orthopedic surgeon (for example, from a family doctor who has rendered treatment for a condition other than the one alleged) may contain related information. Therefore, we may ask the claimant if they saw other providers during the period at issue. In addition, if the back impairment arose out of an injury at work, we would expect the claimant, upon our request, to inform us whether they filed a worker’s compensation claim or personal injury lawsuit under the Federal Employers Liability Act (45 U.S.C. 51–60). If so, we may obtain the records from that claim, because they

may contain evidence that “relates” to the claim for disability.

Because the commenter discussed the burden of submitting all evidence, we also considered whether this requirement is consistent with Executive Order 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, 86 FR 71357 (Dec. 16, 2021). The order establishes an executive branch policy for agencies to effectively reduce administrative burdens and minimize “time taxes” to more directly meet the needs of the people of the United States. We do not believe that clarifying the requirement to submit all evidence known to the claimant that relates to the claimed disability will result in a substantially increased burden on claimants. The rule does not require the claimant to create or obtain new evidence, only to inform the RRB of evidence that the claimant is aware of. The rule requires the RRB to assist the claimant in obtaining the required evidence if necessary. If the claimant informs the RRB about the existence of evidence, and the RRB is unable to obtain the evidence, the claimant has fulfilled the claimant’s obligation and the RRB will not penalize the claimant or make any negative inference about the claimant’s disability because of the inability to obtain evidence. When the claimant receives evidence from another source (for example, if the claimant obtains a copy of medical records from a primary care provider), the final rule requires the claimant to submit a complete copy rather than selectively choose which portions to submit. This should require less work on the part of the claimant or the claimant’s representative by removing the need to exercise judgment over which portions of medical records should be submitted. Finally, the requirement to submit all evidence will enable us to obtain more complete case records and adjudicate claims more accurately, serving both a program integrity function (to ensure we do not improperly pay benefits) and the claimant’s interest in receiving an accurate determination. In some cases, receiving complete copies of medical evidence and being informed of all evidence related to a particular claim will avoid the need for us to obtain consultative examinations of the claimant as explained in 20 CFR Subpart G, and this will facilitate prompt adjudications and save the claimant the burden of time and travel to attend such a consultative examination. These benefits outweigh

the minimal additional burden that may result from this requirement.

III. Correction to Proposed Rule Based on Internal Review

In reviewing the submitted public comments, we independently determined one of the proposed changes to 20 CFR 220.45(b) would increase the burden on us and on individuals claiming benefits in a way we did not intend and do not believe is necessary or beneficial. Currently, our regulations require us to develop a complete medical history covering at least the full 12 months preceding your application for benefits before we can decide that you are not disabled, unless you tell us your disability began less than 12 months before you filed your application. This language allows our adjudicators to make fully favorable allowance determinations without awaiting receipt of, or continuing to follow up on, requests for evidence that in the judgment of the adjudicator should not affect the allowance determination, if the evidence we possess is complete and detailed enough to support such a decision.⁴ This standard is consistent with Social Security Administration regulations and policy regarding evaluation of disability claims.⁵

In the NPRM, we proposed to change the language in 20 CFR 220.45(b) to state we will develop that complete medical history covering the preceding 12 months before making any determination on your disability status. If implemented, this change would eliminate our discretion to make a fully favorable allowance decision based on less than 12 months of medical history, even when the evidence is complete and detailed enough to support a fully favorable decision. Favorable decisions could be delayed as a result while we wait for additional evidence or responses that we do not expect will change the result of the case. We did not intend to foreclose the use of discretion in this category of cases when we published the NPRM. As a result, we are modifying the language in the final rule to maintain the existing standard that permits fully favorable decisions with less than 12 months of medical history, if the evidence in our possession is complete and detailed enough to fully support the favorable decision. We also identified and fixed a small number of typographical and grammatical errors

⁴ 20 CFR 220.46(c); U.S. R.R. Ret. Brd. Gen. Couns. Op. L–2017–59 (Dec. 8, 2017).

⁵ 20 CFR 404.1512(b); Program Operations Manual System DI 24515.020.

² 20 CFR 220.104.

³ 20 CFR 220.45(b).

that do not affect the substance of the rule.

Regulatory Analysis

Executive Order 12866, as Supplemented by Executive Order 13563

The RRB, with the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

Executive Order 13132 (Federalism)

This proposed rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the RRB believes that this proposed rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Regulatory Flexibility Act

The RRB certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rulemaking affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 220

Disability benefits, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend 20 CFR part 220 as follows:

PART 220—DETERMINING DISABILITY

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

■ 2. Revise § 220.45 to read as follows:

§ 220.45 Providing evidence of disability.

(a) *General.* You are responsible for providing all evidence of the claimed disability and the effect of the disability on your ability to work. You must inform the Board about or submit all

evidence known to you that relates to the claimed disability. This duty is ongoing and requires you to disclose any additional related evidence about which you become aware. This duty applies at each level of the administrative review process, including the appeals level, if the evidence relates to the period on or before the date of the hearings officer's decision. The Board will assist you, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the expense of the Board as explained in §§ 220.50 and 220.51.

(b) *Kind of evidence.* (1) You must provide medical evidence proving that you have an impairment(s) and how severe it is during the time you claim to be disabled. The Board will consider only impairment(s) you claim to have or about which the Board receives evidence. Before deciding that you are not disabled, the Board will develop a complete medical history (*i.e.*, evidence from the records of your medical sources) covering at least the preceding 12 months, unless you say that your disability began less than 12 months before you filed an application. The Board will make every reasonable effort to help you in getting medical reports from your own medical sources when you give the Board permission to request them. Every reasonable effort means that the Board will make an initial request and, after 20 days, one follow-up request to your medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the follow-up request to reply (unless experience indicates that a longer period is advisable in a particular case). In order to expedite processing, the Board may order a consultative exam from a non-treating source while awaiting receipt of medical source evidence. If the Board asks you to do so, you must contact the medical sources to help us get the medical reports.

(2) *Exceptions.* Notwithstanding paragraph (a) of this section, evidence does not include:

(i) Oral or written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communications to us; or

(ii) Your representative's analysis of your claim, unless you or your representative voluntarily disclose it to us. Your representative's "analysis of your claim" means information that is

subject to the attorney work product doctrine, but it does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are entitled to benefits (see paragraph (b)(2)(iv) of this section).

(iii) The provisions of paragraph (b)(2)(i) of this section apply to communications between you and your non-attorney representative only if the communications would be subject to the attorney-client privilege if your non-attorney representative were an attorney. The provisions of paragraph (b)(2)(ii) of this section apply to the analysis of your claim by your non-attorney representative only if the analysis of your claim would be subject to the attorney work product doctrine if your non-attorney representative were an attorney.

(iv) The attorney-client privilege generally protects confidential communications between an attorney and the attorney's client that are related to providing or obtaining legal advice. The attorney work product doctrine generally protects an attorney's analysis, theories, mental impressions, and notes. In the context of your disability claim, neither the attorney-client privilege nor the attorney work product doctrine allows you to withhold factual information, medical source opinions, or other medical evidence that we may consider in determining whether or not you are entitled to benefits. For example, if you tell your representative about the medical sources you have seen, your representative cannot refuse to disclose the identity of those medical sources to us based on the attorney-client privilege. As another example, if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine. The attorney work product doctrine would not protect the source's opinions on the completed form, regardless of whether or not your representative used the form in an analysis of your claim or made handwritten notes on the face of the report.

(c) *Your responsibility.* You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. When you submit evidence received from another source, you must submit that evidence in its entirety, unless you previously submitted the same evidence to us or we instruct you otherwise. The Board may also ask you to provide evidence about:

- (1) Your age;
- (2) Your education and training;
- (3) Your work experience;
- (4) Your daily activities both before and after the date you say that you became disabled;
- (5) Your efforts to work; and
- (6) Any other evidence showing how your impairment(s) affects your ability to work. (In §§ 220.125 through 220.134, we discuss in more detail the evidence the Board needs when it considers vocational factors.)

Dated: September 19, 2024.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2024–21777 Filed 9–24–24; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[FR–6483–N–01]

Section 108 Loan Guarantee Program: Announcement of Fee To Cover Credit Subsidy Costs for FY 2025 and Solicitation of Comment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of fee; request for comments.

SUMMARY: This document announces and solicits comment on the fee that HUD will collect from borrowers of loans guaranteed under HUD's Section 108 Loan Guarantee Program (Section 108 Program) to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in Fiscal Year 2025 in the event HUD is required or authorized by statute to do so, notwithstanding subsection (m) of section 108 of the Housing and Community Development Act of 1974. The fee to offset credit subsidy costs is changing from 1.64 percent in Fiscal Year 2024 to 0.82 percent in Fiscal Year 2025.

DATES: September 25, 2024.

Comment Due Date: October 25, 2024.

Applicability Date: October 28, 2024, unless after consideration of comments received, HUD determines a second **Federal Register** notification is necessary. If HUD determines a second **Federal Register** notification is necessary, it will indicate that on October 25, 2024 at https://www.hud.gov/program_offices/comm_planning/section108.

ADDRESSES: Interested persons are invited to submit comments responsive to this document. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov. To receive consideration as public comments, comments must be submitted through one of the two methods specified below. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Paul Webster, Director, Financial Management Division, Office of Block

Grant Assistance, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 7282, Washington, DC 20410; telephone number 202–402–4563 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. FAX inquiries (but not comments) may be sent to Mr. Webster at 202–708–1798 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015 (division K of Public Law 113–235, approved December 16, 2014) (2015 Appropriations Act) provided that “the Secretary shall collect fees from borrowers, notwithstanding subsection (m) of such section 108, to result in a credit subsidy cost of zero for guaranteeing . . .” Section 108 loans. Section 108(m) of the Housing and Community Development Act of 1974 states that “No fee or charge may be imposed by the Secretary or any other Federal agency on or with respect to a guarantee made by the Secretary under this section after February 5, 1988.” Identical language was continued or included in the Department's continuing resolutions and appropriations acts authorizing HUD to issue Section 108 loan guarantees during Fiscal Years (FYs) 2016 to 2024. HUD anticipates that the Fiscal Year (FY) 2025 HUD appropriations bill under consideration¹ also has identical language suspending the prohibition against charging fees for loans issued with Section 108 guarantees after February 5, 1988, and requiring that the Secretary collect fees from borrowers to result in a credit subsidy cost of zero for the Section 108 Program.

On November 3, 2015, HUD published a final rule (80 FR 67626) that amended the Section 108 Program regulations at 24 CFR part 570 to establish additional procedures, including procedures for announcing the amount of the fee each fiscal year when HUD is required to offset the credit subsidy costs to the Federal Government to guarantee Section 108

¹ Title II of H.R. 9028, 118th Cong., under the heading “Community Development Loan Guarantees Program Account.”

loans. For FYs 2016 to 2024, HUD published notifications to set the fees.²

II. FY 2025 Fee: 0.82 Percent of the Principal Amount of the Loan

If authorized by statute, this document sets the fee for Section 108 loan disbursements under loan guarantee commitments awarded for FY 2025 at 0.82 percent of the principal amount of the loan. HUD will collect this fee from borrowers of loans guaranteed under the Section 108 Program to offset the credit subsidy costs of the guaranteed loans pursuant to commitments awarded in FY 2025 if the FY 2025 HUD appropriations bill under consideration is enacted, or if HUD is otherwise required or authorized by statute to collect fees from borrowers to offset the credit subsidy costs of the guaranteed loans, notwithstanding subsection (m) of section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308(m)). The calculation of the FY 2025 fee uses a similar calculation model as the FY 2016 to FY 2024 fee notifications, but incorporates updated information regarding the composition of the Section 108 portfolio and the timing of the estimated future cash flows for defaults and recoveries. The calculation of the fee is also affected by the discount rates required to be used by HUD when calculating the present value of the future cash flows as part of the Federal budget process. HUD is also changing some of the underlying assumptions of the fee calculation for this fee announcement.

As described in 24 CFR 570.712(b), HUD's credit subsidy calculation is based on the amount required to reduce the credit subsidy cost to the Federal Government associated with making a Section 108 loan guarantee to the amount established by applicable appropriation acts. As a result, HUD's credit subsidy cost calculations incorporated assumptions based on: (1) data on default frequency for municipal debt where such debt is comparable to loans in the Section 108 loan portfolio; (2) data on recovery rates on collateral security for comparable municipal debt; (3) the expected composition of the Section 108 portfolio by end users of the guaranteed loan funds (e.g., third-party borrowers and public entities); and (4) other factors that HUD determined were relevant to this calculation (e.g.,

assumptions as to loan disbursement and repayment patterns). HUD changed the assumptions underlying the fee calculations that had applied in previous fiscal years by (1) increasing the expected housing component of the Section 108 portfolio in anticipation of a Departmental initiative and (2) adjusting the projected repayment period for loans to accommodate more flexible repayment options to be made available under a Departmental initiative, resulting in more principal payments occurring in later years of the loan term.

Taking these factors into consideration, HUD determined that the fee for disbursements made under loan guarantee commitments awarded in FY 2025 will be 0.82 percent, which will be applied only at the time of loan disbursements. Note that future notifications may provide for a combination of upfront and periodic fees for loan guarantee commitments awarded in future fiscal years but, if so, HUD will provide the public an opportunity to comment if appropriate under 24 CFR 570.712(b)(2).

The expected cost of a Section 108 loan guarantee is difficult to estimate using historical program data because there have been no defaults in the history of the program that required HUD to invoke its full faith and credit guarantee or use the credit subsidy reserved each year for future losses.³ This is due to a variety of factors, including the availability of Community Development Block Grant (CDBG) funds as security for HUD's guarantee as provided in 24 CFR 570.705(b). As authorized by Section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5308), borrowers may make payments on Section 108 loans using CDBG grant funds. Borrowers may also make Section 108 loan payments from other anticipated sources but continue to have CDBG funds available should they encounter shortfalls in the anticipated repayment source. Despite the program's history of no defaults, Federal credit budgeting principles require that the availability of CDBG funds to repay the guaranteed loans cannot be assumed in the development of the credit subsidy cost estimate (see 80 FR 67629, November 3, 2015). Thus, the estimate must incorporate the risk that alternative sources are used to repay the guaranteed loan in lieu of CDBG funds,

and that those sources may be insufficient. Based on the rate that CDBG funds are used annually for repayment of loan guarantees, HUD's calculation of the credit subsidy cost must acknowledge the possibility of future defaults if those CDBG funds were not available. The fee of 0.82 percent of the principal amount of the loan will offset the expected cost to the Federal Government due to default, financing costs, and other relevant factors. To arrive at this measure, HUD analyzed data on comparable municipal debt over an extended period. The estimated rate is based on the default and recovery rates for general purpose municipal debt and industrial development bonds. The cumulative default rates on industrial development bonds were higher than the default rates on general purpose municipal debt during the period from which the data were taken. These two subsectors of municipal debt were chosen because their purposes and loan terms most closely resemble those of Section 108 guaranteed loans.

In this regard, Section 108 guaranteed loans can be broken down into two categories: (1) loans that finance public infrastructure and activities to support subsidized housing (other than financing new construction) and (2) other development projects (e.g., retail, commercial, industrial). The 0.82 percent fee was derived by weighting the default and recovery data for general purpose municipal debt and the data for industrial development bonds according to the expected composition of the Section 108 portfolio by corresponding project type. Based on the dollar amount of Section 108 loan guarantee commitments awarded from FY 2019 through FY 2023 and expected Section 108 guaranteed loans as part of a Departmental initiative, HUD expects that 71.7 percent of the Section 108 portfolio will be similar to general purpose municipal debt and 28.3 percent of the portfolio will be similar to industrial development bonds. In setting the fee at 0.82 percent of the principal amount of the guaranteed loan, HUD expects that the amount generated will fully offset the cost to the Federal Government associated with making guarantee commitments awarded in FY 2025. Note that the fee decreased from 1.64 percent in FY 2024 to 0.82 percent in FY 2025, a decrease of 0.82 percentage points in the level of fee charged.

This document establishes a statutorily required fiscal requirement in the form of a fee based on rate and cost determinations that does not constitute a development decision that

² 80 FR 67634 (November 3, 2015), 81 FR 68297 (October 4, 2016), 82 FR 44518 (September 25, 2017), 83 FR 50257 (October 5, 2018), 84 FR 35299 (July 23, 2019), 85 FR 52479 (August 26, 2020), 86 FR 59302 (October 27, 2021), 87 FR 53662 (September 1, 2022), and 88 FR 73532 (October 26, 2023) respectively.

³ U.S. Department of Housing and Urban Development, *Study of HUD's Section 108 Loan Guarantee Program*, (prepared by Econometrica, Inc. and The Urban Institute), September 2012, at pp. 73–74. This fact has not changed since the issuance of this report.

affects the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

III. Solicitation of Comment

HUD solicits comment on the fee rate to be imposed on the Section 108 Program. HUD will publish a second **Federal Register** notice, if necessary, after consideration of public comments. This announced fee goes will become applicable on October 28, 2024 unless HUD indicates its intent to publish a second **Federal Register** notice through a notice on https://www.hud.gov/program_offices/comm_planning/section108 on October 25, 2024.

Marion M. McFadden,

Principal Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2024–21706 Filed 9–24–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

United States Mint

31 CFR Part 100

Exchange of Coin

AGENCY: United States Mint, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final rule removes Treasury regulations relating to the exchange of bent, partial, fused, and mixed coins. The removal will end the exchange program for bent and partial coin.

DATES: *Effective Date:* October 25, 2024.

FOR FURTHER INFORMATION CONTACT: Apryl Whitaker, Senior Legal Counsel, Office of the Chief Counsel, United States Mint, at (202) 354–7938 or rulemaking@usmint.treas.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Treasury regulations appearing at 31 CFR 100.11 are promulgated under 31 U.S.C. 321 and relate to the exchange of bent and partial coin. The last amendment to 31 CFR part 100, subpart C, was on December 20, 2017. In August 2018, the United States Mint suspended the redemption program due to the possibility of unlawful material being submitted for redemption. On May 5, 2021, the United States Mint issued a notice of proposed rulemaking proposing certain revisions to these

regulations (86 FR 23877), which was withdrawn on May 3, 2024 (89 FR 36721). The United States Mint subsequently decided to close the bent and partial coin exchange program.

For many years, the United States Mint has redeemed bent and partial coins for full face value. However, circumstances surrounding the redemption program have materially changed. Today submissions must be carefully evaluated to ensure that counterfeit coins are not accepted to the program, and the condition of many coins, particularly large volumes of coins damaged by recycling or industrial processes, makes authentication increasingly difficult and time-consuming. In addition, the volume of coins submitted for possible redemption has greatly increased, and counterfeits have been increasingly identified in imported coins intercepted by law enforcement, as well as in several large submissions to the redemption program. The result of these changes is that there is no financially responsible way to ensure the integrity of the redemption program and to the meet the full level of demand. The United States Mint's capacity to process mutilated coins is limited by physical storage capacity, caseload complexity, and workload. Authentication procedures require extensive time and resources. The United States Mint has dedicated substantial time and resources to the bent and partial coin exchange program, in addition to operating the program at a loss by paying out face value for redemptions.

In 89 FR 36721, May 3, 2024, the United States Mint issued a notice of proposed rulemaking (NPRM) to remove regulations relating to the exchange of bent and partial coins, and it requested comments on the proposed revisions. In the NPRM, the Mint proposed to end the exchange program for bent and partial coin. As discussed below, the United States Mint has considered the comments received and has concluded that the proposed regulations will be adopted as a final rule.

II. Public Participation

The United States Mint received 35 comments in response to the NPRM proposing to end the Mutilated Coin Redemption Program. Eight of these comments were provided by organizations that identified as businesses, two identified as a trade association, and the remainder of the comments were provided by unknown, anonymous, or individual persons. The comments are available at www.regulations.gov.

Disposing of Coins

Some commenters were concerned about the disposal of dimes, quarters, half-dollar, and dollar coins. The proposed rule indicated correctly that the melting of dimes, quarters, half-dollar, and dollar coins is not regulated by the United States Mint. There is no prohibition on melting dimes, quarters, half-dollar, and dollar coins for non-fraudulent purposes. Some commenters expressed concern that 18 U.S.C. 331 criminalizes the melting of all U.S. coins. This statute, however, specifically addresses certain behavior that is conducted with the intent to defraud and does not address coins melted without fraudulent intent and consistent with 31 CFR part 82.

While there is a prohibition against melting pennies and nickels, there is a specific exception at 31 CFR 82.2 for coins melted or treated incidental to recycling other materials if (1) the coins were not added to the other materials for their metallurgical value, (2) the volumes of the coins, relative to the volumes of the other materials recycled, makes it clear that the presence of such coins is merely incidental, and (3) the separation of the coins from the other materials would be impracticable or cost prohibitive. See 31 CFR 82.2(c). This exception extends to the melting of coins that become mutilated due to treatment that is itself within the scope of the exception. If an exception does not apply, then applications for licenses to melt pennies and nickels should be transmitted to the Director, United States Mint; 801 9th Street NW, Washington, DC 20220. See 31 CFR 82.2(f).

Some individuals were concerned about how they can dispose of their bent or partial coins. Individuals can inquire of their local scrap metal dealers.

Lack of Capacity

Some commenters indicated that the United States Mint's assertion that it lacks the capacity to process large volumes of bent or partial coin is disingenuous, because, in the past, large submissions of bent or partial coin were delivered directly to a third-party contractor, not to the United States Mint. However, after the program was suspended in 2018, the United States Mint developed new authentication techniques and procedures as recommended by the Treasury Department's Office of Inspector General to test and authenticate the genuineness of coins. To effectively authenticate the material with the new counterfeit detection methods that the United States Mint developed, the

United States Mint could no longer accept redemption submissions at a third-party site. The United States Mint's coin authentication methods are time-consuming and can only be performed using specialized equipment at the United States Mint's Philadelphia location.

Prior Participants

Some commenters suggested that the United States Mint develop a "trusted," "preferred," or "qualified" participant program whereby certain participants that meet additional requirements could be allowed to submit large volumes of coins for possible redemption. Many of these commenters did not specify the types of additional requirements that would qualify these participants as "trusted," merely suggesting that certain participants should be allowed to redeem large amounts of coin. Other participants suggested site visits, background checks, a certification process, or compliance with industry standards. None of these controls separately or together, however, are sufficient to detect counterfeit coins. Every submission must be properly authenticated by the United States Mint to detect counterfeit coins, and background checks or site visits, for example, would not eliminate the need for this crucial step in the process.

A few commenters suggested that coins that were stockpiled during the program suspension should be exempted, essentially allowing these coins to be redeemed with no restrictions. In August 2018, the United States Mint stopped processing submissions to the redemption program due to the possibility of unlawful material being submitted for redemption and later formally suspended the redemption program in July 2019 (84 FR 35181). Members of the public have been on notice that the exchange program is subject to suspension and those who have stockpiled coins during its suspension assumed the risk of doing so.

Office of Inspector General Recommendations for the Redemption Program

Some commenters indicated that the United States Mint has not complied with the recommendations contained in the Department of the Treasury's Office of Inspector General's August 18, 2020, Audit Report on "Mint Controls Over Raw Materials and Coin Exchange Programs Need Improvement." Following the issuance of these audit recommendations, the United States Mint hired additional staff and developed improved authentication

procedures and testing methodology to detect counterfeit coins. To implement the new procedures, the United States Mint can no longer accept redemption submissions at a third-party site. The United States Mint's coin authentication methods are time-consuming and can only be performed using specialized equipment and processes developed and installed at the United States Mint's Philadelphia location.

Environmental Concerns

Some commenters were concerned that unredeemable bent or partial coins would end up in landfills. Although the melting of pennies and nickels is prohibited in certain instances, the melting of dimes, quarters, and half-dollar coins, which historically have made up the majority of bent or partial coin redemptions, is not prohibited. The public may melt and reuse coins consistent with 31 CFR part 82, which reduces the likelihood that unredeemable coins will be landfilled. At least one commenter indicated that, if the program were closed, bent or partial coin would end up recycled as scrap metal sold on the secondary metals market.

Some commenters were concerned that closing the redemption program would lead to increased metals mining by requiring the United States Mint to purchase more virgin metal. The amount of metal contained in bent or partial coin redeemed is very small in the context of the larger metals market. In addition, melted coinage scrap must always be supplemented with pure nickel and copper to re-alloy the material for reuse. For example, quarters are made with a pure copper core and two cupronickel outer layers. These coins are permanently bonded in three layers, and the individual layers cannot be separated for reclamation. When quarters and other clad coins are melted, the resulting coinage scrap metal cannot be re-used for the core component, and significant amounts of nickel must be added to the scrap to create the alloy for the outer layer. The United States Mint's suppliers are limited in the amount of scrap that can be used to manufacture new coin roll. Roughly 25% of the material that the United States Mint purchases for circulating strip is returned to the strip supplier as "web-scrap." This material must be recycled, along with submissions from the Uncurrent Coin Redemption Program, which leaves very little use for additional scrap material. The United States Mint suppliers that redeem scrap are not required to re-use coin scrap material to make new coinage material and may—and do—sell the

excess coin scrap material as scrap. At least one commenter indicated that, if the program were closed, bent or partial coin would end up recycled as scrap metal sold on the secondary metals market. Therefore, the proposed limitations on submissions will not lead to an appreciable increase in the use of primary nickel or copper.

Some commenters suggested evaluating the environmental impact of the redemption program's closure under the National Environmental Policy Act (NEPA). It is the determination of the United States Mint that the final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the NEPA, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Discretionary Program

Some commenters indicated that the redemption program is not a discretionary program and is instead mandated by law. The relevant statutes and regulations pertaining to the U.S. Department of Treasury and the overall statutory framework applicable to the program give broad discretion to the Secretary of the Treasury. The regulations at 31 CFR part 100, subpart C, are promulgated under 31 U.S.C. 321. By law, the Secretary of the Treasury "shall melt obsolete and worn United States coins withdrawn from circulation." See 31 U.S.C. 5120. This statute simply prescribes the method of destruction that the Secretary is to employ when the Secretary withdraws obsolete and worn coins from circulation. There is no statutory requirement for the redemption of mutilated coins. Nor does the statute say how the Secretary shall acquire those coins, how the Secretary shall go about withdrawing those coins from circulation, or how the Secretary shall go about melting coins that have been withdrawn. These details are entirely committed to the Secretary's discretion, and pursuant to that discretion, the Mutilated Coin Redemption Program was established. See 31 CFR 100.11.

The expenses of the Mutilated Coin Redemption Program are entirely paid for through the United States Mint Public Enterprise Fund (PEF), a revolving fund that was created to fund all United States Mint operations in lieu of any appropriations from Congress. See 31 U.S.C. 5136. The PEF legislation makes clear that "all expenses incurred by the Secretary of the Treasury for operations and programs of the United States Mint that the Secretary of the Treasury determines, *in the Secretary's*

sole discretion, to be ordinary and reasonable incidents of Mint operations and programs . . . shall be paid out of the Fund.” *Id.* (emphasis added). In other words, the Secretary of the Treasury is given sole discretion to decide whether the Mutilated Coin Redemption Program will operate and be funded. This issue was specifically considered by the court in *Bramlett v. United States Dep’t of the Treasury*, No. 16–257 and 16–270, 2017 WL 1048366 at *5 (E.D. Pa. March 20, 2017), which held that the suspension or termination of the redemption program is committed to agency discretion by law.

Existence of Counterfeits

Some commenters suggested that the United States Mint has no evidence of any counterfeit coins. There are indicators of current counterfeit coin fraud schemes aimed at the Mutilated Coin Redemption Program, the details of which are law enforcement sensitive. The United States Government was successful in forfeiting counterfeit coins in *United States of America v. 5 Crates of Counterfeit Coins*, CV 20–08487, in the United States District Court in the Central District of California. In declaring the coins in this case to be counterfeit and forfeited to the U.S., the court specifically relied on the United States Mint’s counterfeit determination.

Impact on Circulating Coins

Some commenters expressed concern that closing the program would impact the quality of coins in circulation and thus undermine the public’s confidence and trust in the currency system. Commenters, however, did not provide information supporting their belief that bent or partial coins will no longer be removed from circulation if the redemption program were closed. For example, bent and partial coins that are recovered from trash or recycling have already been removed from circulation, and there is no information available to the United States Mint or in the record to support the premise that somehow these coins will continue to circulate if the redemption program were closed. Likewise, individuals and business will continue to remove bent or partial coins from circulation.

Additional commenters suggested that closing the program will impact the United States Mint’s Uncurrent Coin Redemption Program, due to bent or partial coins being diverted to the Uncurrent Coin Redemption Program. The United States Mint’s Uncurrent Coin Redemption Program will continue in accordance with 31 CFR 100.10 and the Federal Reserve’s Operating Circular 2. The Uncurrent Coin Redemption

Program allows financial institutions to redeem whole U.S. coins which are merely worn or reduced in weight by natural abrasion, are readily and clearly recognizable as to genuineness and denomination, are machine countable, and do not include bent or partial coins. See 31 CFR 100.10. Neither the U.S. Mint nor the Federal Reserve will redeem any bent or partial coins.

Operating Losses

Some commenters indicated that operating losses are not a valid reason for the United States Mint to end the redemption program, because the program has always operated at a loss. Commenters requested specific numbers detailing the program’s operating losses. Costs to run the program in the past have included the payout of the face value of the coins being reimbursed, less the scrap credit the United States Mint receives from its suppliers for raw material, and the cost to travel to the suppliers to witness the melt, in addition to the resource costs for the various support personnel. In 2014—the last year the program was fully operational—the United States Mint paid out roughly \$30 million in reimbursement and received roughly \$5 million in scrap credit, for a total cost of about \$25 million (not including the cost of travel, resources expended, and other costs of operating the program).

The United States Mint’s programs are self-sustaining and operate at no cost to the taxpayer. The United States Mint has a fiduciary responsibility to be a prudent steward of its funds and to minimize expenses. The expenses of the Mutilated Coin Redemption Program are considered part of the United States Mint’s circulating coin expenses and are paid from the United States Mint Public Enterprise Fund, a revolving fund that was created to fund all United States Mint operations in lieu of any appropriations from Congress. See 31 U.S.C. 5136. Circulating operations are financed by the sale of circulating coins to the Federal Reserve Bank. In recent years, the United States Mint’s seigniorage, which is the difference between the face value and cost of producing circulating coinage, has significantly declined. For example, as of June 2024, year-to-date seigniorage has decreased 92% compared to June 2023 due to lower coin orders from the Federal Reserve Bank. In view of this decline, continued operation of the redemption program would not be financially responsible.

Congressional Intent

Some commenters point to a 2023 House Appropriations Committee report

that indicated that the United States Mint should work with stakeholders to redeem mutilated coin within the existing regulations and expressed their concern that the United States Mint’s proposed closure of the program is contrary to the intent of Congress. See H.R. Rep No. 118–145 (2023). In that report, the Committee indicated that it expects that the United States Mint will work with entities to recover coin to redeem bent and partial coin through the redemption program, because, according to the report, there was no other reasonable way to manage recovered coin. Consistent with the recommendations in the report, the United States Mint engaged with its program stakeholders through this formal rulemaking process. The United States Mint has addressed the concern regarding disposal of recovered coin to the extent possible by providing information on avenues for the disposal of coins following the program’s closure. The comments received on the proposed rule closing the program recommended that the redemption program should re-open without any limitations on the amount of coin submitted. While the United States Mint has carefully considered these comments, as described above, there is no financially responsible way to ensure the integrity of the redemption program and to meet the full level of demand.

Low Denomination Coins

Several commenters suggested that the program should remain open for low denomination coins, such as pennies and nickels, because, in their view, the risk of counterfeiting lower denominations is lower or non-existent given the lack of economic incentive to counterfeit low denominations. While low denomination coins may be less likely to be counterfeited, this would not eliminate the need for the United States Mint to sample, inspect, and test coins submitted to be redeemed, regardless of denomination. Given these procedural constraints, the United States Mint could no longer accept redemption submissions at a third-party site and, as described above, does not have the capacity to do so in Philadelphia.

Fees

A couple of commenters suggested that the United States Mint develop a small administrative fee for bent or partial coin redemption. As discussed above, the redemption program’s operating expenses are significant. A small administrative fee (one commenter suggested 1% of the value of each submission) would cover only a

very small portion of the redemption program's operating costs.

Extension of Comment Period

Several commenters requested an extension of time to comment on the proposed rule. The United States Mint found the 60-day comment period length appropriate and provided a meaningful opportunity for interested parties to comment on the proposed rule. Of the commenters that submitted extension requests, most were able to provide substantive responses by the deadline.

III. Procedural Analysis

Regulatory Planning and Review

The Office of Management and Budget has determined that this rule does not constitute a "significant regulatory action" under Executive Order 12866, as amended.

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), it is hereby certified that the revisions will not have a significant economic impact on a substantial number of small entities. First and foremost, the regulations do not directly regulate any entities. The redemption of bent or partial coins is a discretionary service offered to the public; participation is voluntary.

In accordance with section 3(a) of the Regulatory Flexibility Act, the United States Mint has reviewed the proposed regulation. While the United States Mint certifies that the final rule—or in this case—the removal thereof, will not have a significant economic impact on a substantial number of small entities given that the regulations do not directly regulate any entities, the United States Mint has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Rule

The regulations at 31 CFR part 100, subpart C, are promulgated under 31 U.S.C. 321, and provide for the exchange of uncirculated, bent, partial, fused, and mixed coins. For the reasons herein, the United States Mint has decided to close the bent and partial coin exchange program, which is a discretionary program that is not mandated by law.

2. Significant Comments in Response to the Initial Regulatory Flexibility Analysis

One commenter that appeared to be a small business indicated that closing the program would lead to closing their

business but did not quantify the specific economic impact of the proposed changes to this voluntary and discretionary program. One of the commenters stated that they worked for the City of Juneau, Alaska, a small entity as defined by the RFA, and inquired about how to dispose of "several mutilated coins [accumulated] over the years." The commenter did not express opposition to the program's closure and merely requested information about where to dispose of what appears to be a very small number of coins. The United States Mint has carefully considered the impact of the redemption program's closure on small businesses; however, for the reasons discussed herein, there is no financially responsible way for the United States Mint to expand the resources devoted to the program necessary to meet the full level of demand. The United States Mint has carefully reviewed all the comments that were submitted and, based on the data available, has analyzed the regulatory flexibility impact using reasonable assumptions.

3. Small Entities Affected by the Rule

The number of entities tendering significant quantities of coins for redemption in the past has been small. A large number of entities redeeming coins in the past were individuals—not businesses. A wide variety of businesses, such as municipal entities, recyclers, coin processors, amusement parks, auto shops, and waste management companies have applied for coins to be redeemed in the past. Data on the number of small entities voluntarily submitting coins to the redemption program was not provided by the commenters or within the public docket. Likewise, the United States Mint does not have data within its possession regarding the numbers of small entities submitting coins. The United States Mint has carefully reviewed all the comments that have been submitted and, based on the data available, has analyzed the regulatory flexibility impact using reasonable assumptions.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The United States Mint has not identified any reporting, recordkeeping, or other compliance requirements associated with the rule.

5. Steps Taken To Minimize Impacts on Small Entities and Alternatives Considered

The United States Mint considered alternatives in promulgating this final rule. For example, the United States Mint considered re-opening the program

under the parameters identified in the May 5, 2021, **Federal Register** document (86 FR 23877), proposing certain revisions to these regulations that would establish weight and shipment limits per participant and would prohibit the submission of certain kinds of coins or coins with certain kinds of damage. However, re-opening the program—even with these restrictions—would entail significant costs to the United States Mint. Further, the volume of coins submitted for possible redemption has greatly increased over the years, and there is no financially responsible way for the United States Mint to expand the resources devoted to the program necessary to meet the full level of demand. In response to the United States Mint's May 5, 2021, **Federal Register** document (86 FR 23877), several commenters expressed concern with the proposed 1,000 lb. per month submission limit, indicating that businesses have large volumes of coins to be redeemed that well exceed the monthly or annual limit. For example, one vendor alone indicated that at a rate of 1,000 lbs. per month, it would take over seven years just to redeem a portion of its inventory. The prior rulemaking indicated that, under these limits, participants would not be guaranteed the right to submit 1,000 lbs. per month; nor would the United States Mint have capacity even at this low rate to evaluate more than a small number of submissions per month.

The United States Mint considered re-opening the program for a short, limited time under the new parameters identified in the May 5, 2021, **Federal Register** document (86 FR 23877) with a published sunset date to allow those that have stored their mutilated coins in anticipation of the program reopening to submit their mutilated coins. It is clear, however, that there is no financially responsible way for the United States Mint to expand the resources devoted to the program necessary to meet the full level of demand, even for a limited time.

List of Subjects in 31 CFR Part 100

Coins.

For the reasons set forth in the preamble, the United States Mint amends 31 CFR part 100 as follows:

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

- 1. The authority citation for part 100 continues to read as follows:

Authority: 31 U.S.C. 321.

§ 100.11 [Removed and Reserved]

- 2. Remove and reserve § 100.11.

■ 3. Amend § 100.12 by revising paragraph (b) to read as follows:

§ 100.12 Exchange of fused or mixed coin.

* * * * *

(b) *Fused and mixed coins.* The United States Mint will not accept fused or mixed coins for redemption.

§ 100.13 [Amended]

■ 4. Amend § 100.13 by:

■ a. Removing paragraph (a);

■ b. Redesignating paragraphs (b) through (d) as paragraphs (a) through (c), respectively; and

■ c. In newly redesignated paragraph (b), removing the phrase “to any bent or partial”.

Ventris C. Gibson,

Director, United States Mint.

[FR Doc. 2024–21936 Filed 9–24–24; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determinations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of determinations.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one determination issued pursuant to an April 15, 2021 Executive order, as amended on December 22, 2023. OFAC is also publishing one new and one amended determination issued pursuant to a March 11, 2022 Executive order, as amended on December 22, 2023. The determinations were previously issued on OFAC's website.

DATES: The Determination Pursuant to Section 11(a)(ii) of Executive Order 14024 took effect on December 22, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On April 15, 2021, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14024, “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation” (86 FR 20249, April 19, 2022).

On December 22, 2023, the President, invoking the authority of, *inter alia*, IEEPA, issued E.O. 14114, “Taking Additional Steps With Respect to the Russian Federation's Harmful Activities” (88 FR 89271, December 26, 2023). Among other things, E.O. 14114 amends E.O. 14024 to redesignate section 11 as section 12 and add a new section 11. Section 11(a) of E.O. 14024, as amended, provides that the Secretary of the Treasury, in consultation with the Secretary of State, and with respect to subsection (a)(ii) of this section, in consultation with the Secretary of State and the Secretary of Commerce, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section, upon determining that the foreign financial institution has met the criteria in section 11(a)(i) or section 11(a)(ii). Section 11(a)(ii) of E.O. 14024, as amended, authorizes the imposition of sanctions on a foreign financial institution that has conducted or facilitated any significant transaction or transactions, or provided any service, involving Russia's military-industrial base, including the sale, supply, or transfer, directly or indirectly, to the Russian Federation of any item or class of items as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce.

E.O. 14114 also amends E.O. 14068 by striking subsection (a)(i) of section 1 of E.O. 14068 and inserting a new subsection (a)(i). Subsection (a)(i)(A) of E.O. 14068, as amended, provides that the importation and entry into the United States, including importation for admission into a foreign trade zone located in the United States, of the following products of Russian Federation origin: fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian Federation origin, as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce is prohibited.

Subsection (a)(i)(B) of E.O. 14068, as amended, provides that the importation

and entry into the United States, including importation for admission into a foreign trade zone located in the United States, of categories of any of the following products as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security, that were mined, extracted, produced, or manufactured wholly or in part in the Russian Federation, or harvested in waters under the jurisdiction of the Russian Federation or by Russia-flagged vessels, notwithstanding whether such products have been incorporated or substantially transformed into other products outside of the Russian Federation: fish, seafood, and preparations thereof; diamonds; and any other such products as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, and the Secretary of Homeland Security is prohibited.

On December 22, 2023, pursuant to delegated authority, the Director of OFAC, in consultation with the Secretary of State and the Secretary of Commerce, issued a determination identifying certain items or classes of items pursuant to section 11(a)(ii) of E.O. 14024, as amended by E.O. 14114. Also on December 22, 2023, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, the Department of Commerce, and the Department of Homeland Security, issued a determination pursuant to sections 1(a)(i)(B), 1(b), and 5 of E.O. 14068 to determine that the prohibitions in section 1(a)(i)(B) of E.O. 14068 shall apply to certain categories of fish, seafood, and preparations thereof. Additionally, on December 22, 2023, the Director of OFAC, in consultation with the Department of State and the Department of Commerce, re-issued an amended determination pursuant to sections 1(a)(i)(A), 1(b), and 5 of E.O. 14068 that had previously determined that the prohibitions in section 1(a)(i) of E.O. 14068 applied to gold of Russian Federation origin. Each determination was made available on OFAC's website (<https://ofac.treasury.gov>) when it was issued. The text of these determinations is below.

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 11(a)(ii) of Executive Order 14024

Section 11(a)(ii) of Executive Order (E.O.) 14024 of April 15, 2021 (“Blocking Property With Respect To

Specified Harmful Foreign Activities of the Government of the Russian Federation”), as amended by E.O. of December 22, 2023 (“Taking Additional Steps With Respect to the Russian Federation’s Harmful Activities”), authorizes the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce, to impose sanctions on a foreign financial institution upon determining that the foreign financial institution has conducted or facilitated any significant

transaction or transactions, or provided any service, involving Russia’s military-industrial base, including the sale, supply, or transfer, directly or indirectly, to the Russian Federation, of any item or class of items as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce.
To further address the unusual and extraordinary threat to the national security, foreign policy, and economy of

the United States described in E.O. 14024, as amended, and in consultation with the Department of State and the Department of Commerce and pursuant to 31 CFR 587.802, I hereby determine that section 11(a)(ii) of E.O. 14024 shall apply to items or classes of items listed in the Annex to this determination.
This determination shall take effect on December 22, 2023.
Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: December 22, 2023.

ANNEX TO DETERMINATION REGARDING CERTAIN ITEMS OR CLASS OF ITEMS OF DECEMBER 22, 2023

	Items determined pursuant to E.O. 14024, Sec. 11(a)(ii)
<i>Certain machine tools and manufacturing equipment</i>	Numerically controlled (CNC) machine tools. Additive manufacturing (AM) machine tools. Semiconductor manufacturing equipment.
<i>Certain manufacturing materials for semiconductors and related electronics.</i>	Silicon boules. Silicon wafers. Photoresist materials. Bare printed circuit boards (PCBs). Printed circuit board (PCB) substrates.
<i>Certain electronic test equipment</i>	Oscilloscopes. Automated test equipment. Data acquisition systems. Signal generators. Pulse generators. Spectrum analyzers.
<i>Certain propellants, chemical precursors for propellants and explosives</i>	Nitrocellulose. Smokeless powder. Research Department eXplosive (RDX, also known as Royal Demolition eXplosive, cyclonite, hexogen). High Melting eXplosive (HMX, also known as High-Molecular-Weight RDX, octogen, cyclotetramethylenetetranitramine).
<i>Certain lubricants and lubricant additives</i>	Turbine oil. Turbine oil additives.
<i>Certain bearings</i>	High-precision ball and roller bearings Angular contact (spindle) bearings
<i>Certain advanced optical systems</i>	Thermal sights. Thermal imaging arrays. Infrared focal plane arrays. Image intensifier tubes (IITs).
<i>Certain navigation instruments</i>	Inertial navigation systems (INS). Inertial measurement units (IMUs). Fiber-optic gyroscopes (FOGs).

OFFICE OF FOREIGN ASSETS CONTROL
Determination Pursuant to Section 1(a)(i)(B) of Executive Order 14068
Prohibitions Related to Imports of Certain Categories of Fish, Seafood, and Preparations Thereof
Pursuant to section 1(a)(i)(B), 1(b), and 5 of Executive Order (E.O.) 14068 of March 11, 2022 (“Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression”), as amended by E.O. of December 22, 2023 (“Taking Additional Steps With Respect to the Russian Federation’s Harmful Activities”), and 31 CFR 587.802, and in consultation with the Department of State, the Department of Commerce, and

the Department of Homeland Security, I hereby determine that the prohibitions in section 1(a)(i)(B) of E.O. 14068 shall apply to the following categories of fish, seafood, and preparations thereof, that were produced wholly or in part in the Russian Federation, or harvested in waters under the jurisdiction of the Russian Federation or by Russia-flagged vessels, notwithstanding whether such fish, seafood, and preparations thereof have been incorporated or substantially transformed into another product outside of the Russian Federation: salmon, cod, pollock, and crab. As a result, the importation and entry into the United States, including importation for admission into a foreign trade zone located in the United States, of such salmon, cod, pollock, or crab is

prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control.
This determination shall take effect on December 22, 2023.
Bradley T. Smith,
Director, Office of Foreign Assets Control.
Dated: December 22, 2023.

OFFICE OF FOREIGN ASSETS CONTROL**Determination Pursuant to Section 1(a)(i)(A) of Executive Order 14068****Prohibitions Related to Imports of Gold of Russian Federation Origin (as Amended)**¹

Pursuant to sections 1(a)(i)(A), 1(b), and 5 of Executive Order (E.O.) 14068 of March 11, 2022 (“Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression”), as amended by E.O. of December 22, 2023 (“Taking Additional Steps with Respect to the Russian Federation’s Harmful Activities”), and 31 CFR 587.802, the Director of the Office of Foreign Assets Control, in consultation with the Department of State and the Department of Commerce, hereby determines that the prohibitions in section 1(a)(i)(A) of E.O. 14068 shall apply to gold of Russian Federation origin. As a result, the importation into the United States of gold of Russian Federation origin is prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control.

This determination excludes gold of Russian Federation origin that was located outside of the Russian Federation prior to June 28, 2022.

This determination became effective upon June 28, 2022.

Bradley T. Smith,
Director, Office of Foreign Assets Control.

Dated: December 22, 2023.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–21798 Filed 9–24–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY**Office of Foreign Assets Control****31 CFR Part 587****Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 25E, 25F, 108, and 109**

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

¹ A prior version of this determination prohibited the same activities. This amended version of the determination reflects technical, non-substantive changes in light of an amendment to Executive Order 14068.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 25E, 25F, 108, and 109, each of which was previously made available on OFAC’s website.

DATES: GL 25E was issued on September 4, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:**Electronic Availability**

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

Background

On September 4, 2024, OFAC issued GL 25E to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR). GL 25E superseded GL 25D. On September 5, 2024, OFAC issued GL 108, also authorizing transactions otherwise prohibited by the RuHSR and expiring November 6, 2024. On September 13, 2024, OFAC issued GLs 25F and 109, both authorizing transactions otherwise prohibited by the RuHSR. GL 25F superseded GL 25E. GL 109 expires November 13, 2024. Each GL was made available on OFAC’s website (<https://ofac.treasury.gov>) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL**Russian Harmful Foreign Activities Sanctions Regulations****31 CFR Part 587****GENERAL LICENSE NO. 25E****Authorizing Transactions Related to Telecommunications and Certain Internet-Based Communications**

(a) Except as provided in paragraph (d) of this general license, all transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving the Russian Federation that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), are authorized.

(b) Except as provided in paragraph (d) of this general license, the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, to the Russian Federation of services incident to the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, user authentication services, web hosting, and domain name registration services, that is prohibited by the RuHSR, is authorized.

(c) Except as provided in paragraph (d) of this general license, the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, to the Russian Federation of software, hardware, or technology incident to the exchange of communications over the internet is authorized, provided that:

(i) If the software, hardware, or technology is subject to the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), the exportation, reexportation, sale, or supply to the Russian Federation of such software, hardware, or technology is licensed or otherwise authorized by the Department of Commerce pursuant to the EAR; and

(ii) If the software, hardware, or technology is not subject to the EAR, the exportation, reexportation, sale, or supply to the Russian Federation of such software, hardware, or technology would be eligible for a license exception or otherwise authorized by the Department of Commerce if it were subject to the EAR.

(d) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under Executive Order (E.O.) 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation;

(3) Any transactions prohibited by E.O. 14066 or E.O. 14068; or

(4) Any transactions involving Joint Stock Company Channel One Russia, Joint Stock Company NTV Broadcasting

Company, Television Station Russia-1, Limited Liability Company Algoritm, New Eastern Outlook, Oriental Review, Garantex Europe OU, Autonomous Non-Profit Organization Dialog, or Autonomous Non-Profit Organization Dialog Regions, unless separately authorized.

(e) Effective September 4, 2024, General License No. 25D, dated June 12, 2024, is replaced and superseded in its entirety by this General License No. 25E.

Note to General License No. 25E.

Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the EAR.

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

Dated: September 4, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 25F

Authorizing Transactions Related to Telecommunications and Certain Internet-Based Communications

(a) Except as provided in paragraph (d) of this general license, all transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving the Russian Federation that are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), are authorized.

(b) Except as provided in paragraph (d) of this general license, the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, to the Russian Federation of services incident to the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, user authentication services, web hosting, and domain name registration services, that is prohibited by the RuHSR, is authorized.

(c) Except as provided in paragraph (d) of this general license, the

exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, to the Russian Federation of software, hardware, or technology incident to the exchange of communications over the internet is authorized, provided that:

(i) If the software, hardware, or technology is subject to the Export Administration Regulations, 15 CFR parts 730 through 774 (EAR), the exportation, reexportation, sale, or supply to the Russian Federation of such software, hardware, or technology is licensed or otherwise authorized by the Department of Commerce pursuant to the EAR; and

(ii) If the software, hardware, or technology is not subject to the EAR, the exportation, reexportation, sale, or supply to the Russian Federation of such software, hardware, or technology would be eligible for a license exception or otherwise authorized by the Department of Commerce if it were subject to the EAR.

(d) This general license does not authorize:

(1) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under Executive Order (E.O.) 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation;

(3) Any transactions prohibited by E.O. 14066 or E.O. 14068; or

(4) Any transactions prohibited by the RuHSR involving one or more of the following entities, unless separately authorized:

(i) Joint Stock Company Channel One Russia;

(ii) Joint Stock Company NTV Broadcasting Company;

(iii) Television Station Russia-1;

(iv) Limited Liability Company Algoritm;

(v) New Eastern Outlook;

(vi) Oriental Review;

(vii) Garantex Europe OU;

(viii) Autonomous Non-Profit Organization Dialog;

(ix) Autonomous Non-Profit Organization Dialog Regions;

(x) Federal State Unitary Enterprise International Information Agency Rossiya Segodnya; or

(xi) Autonomous Non Profit Organization TV Novosti.

(e) Effective September 13, 2024, General License No. 25E, dated

September 4, 2024, is replaced and superseded in its entirety by this General License No. 25F.

Note to General License No. 25F.

Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the EAR.

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

Dated: September 13, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 108

Authorizing Limited Safety and Environmental Transactions Involving Certain Blocked Persons or Vessels

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to one of the following activities involving the blocked persons described in paragraph (b) are authorized through 12:01 a.m. eastern standard time, November 6, 2024, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) The safe docking and anchoring in port of any vessels in which any person listed in paragraph (b) of this general license has a property interest (the "blocked vessels");

(2) The preservation of the health or safety of the crew of any of the blocked vessels; or

(3) Emergency repairs of any of the blocked vessels or environmental mitigation or protection activities relating to any of the blocked vessels.

(b) The authorization in paragraph (a) of this general license applies to the following blocked persons listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List and any entity in which any of the following persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest:

(1) Gotik Shipping Co; or
(2) Plio Energy Cargo Shipping OPC Private Limited.

(c) This general license does not authorize:

(1) The entry into any new commercial contracts involving the property or interests in property of any blocked persons, including the blocked entities described in paragraph (b) of this general license, except as authorized by paragraph (a);

(2) The offloading of any cargo onboard any of the blocked vessels, including the offloading of liquefied natural gas of Russian Federation origin, except for the offloading of cargo that is ordinarily incident and necessary to address vessel emergencies authorized pursuant to paragraph (a) of this general license;

(3) Any transactions related to the sale of liquefied natural gas of Russian Federation origin;

(4) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(5) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(6) Any transactions otherwise prohibited by the RuHSR, including transactions involving the property or interests in property of any person blocked pursuant to the RuHSR, other than transactions involving the blocked persons described in paragraph (b) of this general license, unless separately authorized.

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

Dated: September 5, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 109

Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on September 13, 2024

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked entities are authorized through 12:01 a.m. eastern standard time, November 13,

2024, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) Federal State Unitary Enterprise International Information Agency Rossiya Segodnya;

(2) Autonomous Non Profit Organization TV Novosti; or

(3) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

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

Dated: September 13, 2024.

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

[FR Doc. 2024–21796 Filed 9–24–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0417]

RIN 1625–AA00

Safety Zone, Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

certain navigable waters of the Cumberland River near Broadway Riverfront Park, Nashville, TN. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the fireworks displays occurring on both September 25 and 27, 2024, between Mile Markers (MM) 190.5 and 191.5. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Ohio Valley or a designated representative.

DATES: This rule is effective from 8:30 p.m. through 10 p.m. on September 25, 2024, and September 27, 2024. This rule will be enforced from 8:30 p.m. to 10 p.m. on September 25, 2024, and September 27, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0417 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician Third Class Joshua Carter, U.S. Coast Guard, MSD Nashville; telephone 615–736–5421 ext. 2104, email Joshua.D.Carter@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the fireworks shows on September 25 and 27, 2024, pose a significant safety hazard to the public. It is impracticable to publish an NPRM because we must establish this safety zone by September 25, 2024.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the two firework shows on September 25 and 27, 2024, between MM 190.5 and 191.5.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that potential hazards associated with fireworks launched from a barge starting September 25 and September 27, 2024, will be a safety concern for anyone within MM 190.5 to 191.5 of the river. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks shows.

IV. Discussion of the Rule

The COTP is proposing to establish a safety zone from 8:30 p.m. to 10 p.m. on both September 25 and 27, 2024. The safety zone would cover all navigable waters within MM 190.5 to 191.5 on the Cumberland River located nearby to Broadway Riverfront Park, Nashville, TN. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled fireworks displays. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under

section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone impacts a small designated area of the Cumberland River for approximately 90 minutes during the evenings of September 25 and 27, 2024, when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone from MM 190.5 to 191.5 lasting up

to 90 minutes on September 25 and 27, 2024, that would prohibit entry within one mile of a fireworks barge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 604–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

- 2. Add § 165.T08–0417 to read as follows:

§ 165.T08–0417 Safety Zone; Cumberland River, Nashville, TN.

(a) *Location.* The following area is a safety zone: all navigable waters of Mile Markers (MM) 190.5 to 191.5 of the Cumberland River.

(b) *Enforcement period.* This section will be enforced from 8:30 p.m. until 10 p.m. on September 25, 2024, and September 27, 2024.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF–FM channel 16 (156.8 MHz) or by telephone at 502–779–5424.

(3) If permission is granted, all persons and vessels shall comply with

the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: September 17, 2024

H.R. Mattern,

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

[FR Doc. 2024–21854 Filed 9–24–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AR69

Expanded Burial Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations pertaining to burial benefits to conform to statutory changes enacted by the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 and the Burial Equity for Guards and Reserves Act of the Consolidated Appropriations Act, 2022. The conforming regulatory changes implement an expansion of the transportation benefit and provision of a single payment rate for non-service-connected burial allowances regardless of the location of a qualifying Veteran's death and coincide with the effective date for the statutory amendments (January 5, 2023). The conforming regulatory changes also implement the extension of the VA plot or interment allowance to Tribal organizations for interment of eligible Veterans on trust land owned by, or held in trust for, the Tribal organization and coincide with the effective date for the statutory amendments (March 15, 2022). VA also provides additional clarifying changes to its burial benefits regulations.

DATES: This rule is effective October 25, 2024.

FOR FURTHER INFORMATION CONTACT: Eric Baltimore, Management and Program Analyst, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8863. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on September 25, 2023, at 88 FR 65641, VA proposed to amend its adjudication regulations pertaining to burial benefits to conform to recent statutory changes enacted by sections 2201 and 2202 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Pub. L. 116–315), and section 102(c) of Division CC (Burial Equity for Guards and Reserves Act) of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103).

VA provided a 60-day public comment period, which ended on November 24, 2023, and received six comments in response to the notice of proposed rulemaking. All comments generally agreed with the amendments in the proposed rulemaking. One commenter stated: “I support the Department of Veterans Affairs proposed rule expanding burial benefits for veterans and their families. I urge the VA to finalize this rule as soon as possible.” Another commenter explained that “[t]his rule change makes sense and is the least we can do to honor our Veterans at the end of life.” VA appreciates these responses and will not make any changes based upon those comments.

One commenter provided support for the proposed rule but addressed an area of improvement for non-service-connected burial benefits. This commenter highlighted the two-year time limit to submit a claim for non-service-connected burial benefits provided in proposed 38 CFR 3.1703(a)(1), which stated that “VA must receive a claim for the non-service-connected burial allowance for veterans described within § 3.1705(b), § 3.1706(b), or § 3.1708(b) no later than 2 years after the burial of the veteran.” This commenter further explained that “due to the relatively low numbers concerning veterans who currently take advantage of these benefits, the time limit on claims should be removed to ensure that more veterans’ families receive this benefit and do not have to pay for the services themselves.”

VA appreciates the commenter's concern; however, the time limit referenced in 38 CFR 3.1703 must adhere to the statutory limitations provided within 38 U.S.C. 2304. Section 2304 states that applications for payments under 38 U.S.C. 2303(a)(2)(B) and (C) must be filed within two years after the burial of the Veteran. Section 2303(a)(2)(B) refers to deceased Veterans who, at the time of non-service-connected death, were in receipt of service-connected disability

compensation (or but for the receipt of retirement pay would have been entitled to such compensation) or were in receipt of pension. Section 2303(a)(2)(C) refers to deceased Veterans for whom the Secretary determines there is no next of kin or other person claiming the body and that there are not sufficient resources available to cover burial and funeral expenses. Aside from this two-year statutory time limit as implemented in 38 CFR 3.1703(a)(1), there are no other time limitations to file claims for burial benefits under 38 CFR part 3, subpart B. No substantive changes were made pursuant to this comment, as legislative action would be required to amend the two-year time limit. But in reviewing this comment, VA did discover a technical error in the proposed changes to 38 CFR 3.1703(a)(1), which VA corrects in this final rule by removing an erroneous cross-reference to 38 CFR 3.1706(b), as described below.

Per 38 U.S.C. 2304, the two-year time limit to submit a claim for non-service-connected burial benefits applies to applications for payments under 38 U.S.C. 2303(a)(2)(B) and (C). This time limit does not apply to 38 U.S.C. 2303(a)(2)(A), which pertains to Veterans who die of a non-service-connected disability while hospitalized by VA (*i.e.*, in a VA facility as defined in 38 U.S.C. 1701(3) to which the deceased Veteran was properly admitted for hospital, nursing home, or domiciliary care under 38 U.S.C. 1710 or 1711(a), or in an institution at which the deceased Veteran was, at the time of death, receiving hospital care in accordance with 38 U.S.C. 1703A, 8111, and 8153, nursing home care under 38 U.S.C. 1720, or nursing home care for which payments are made under 38 U.S.C. 1741).

VA's proposed changes to 38 CFR 3.1703(a)(1) included cross-references to 38 CFR 3.1705(b) and § 3.1708(b)—the implementing regulatory provisions for 38 U.S.C. 2303(a)(2)(B) and (C), respectively, for which 38 U.S.C. 2304's two-year time limit applies. However, VA erroneously proposed to also include a cross-reference to 38 CFR 3.1706(b), the implementing regulatory provision for 38 U.S.C. 2303(a)(2)(A), pertaining to Veterans who die of a non-service-connected disability while hospitalized by VA. Because 38 U.S.C. 2304's two-year time limit does not apply to 38 U.S.C. 2303(a)(2)(A), VA erred by proposing to include the corresponding regulatory provision, 38 CFR 3.1706(b), in 38 CFR 3.1703(a)(1)'s description of the circumstances in which the statutory two-year time limit applies. Accordingly, VA has removed

the reference to 38 CFR 3.1706 in 38 CFR 3.1703(a)(1), as no time limit applies to a claim for the non-service-connected burial allowance for a Veteran who died while hospitalized by VA.

Finally, VA makes one clarifying change to 38 CFR 3.1704 (Burial allowance based on service-connected death). VA revises paragraph (c)(2)'s reference to 38 CFR 3.1707 to specifically reference 38 CFR 3.1707(b), because a claim for the plot or interment allowance for service-connected death is payable under 38 CFR 3.1707(b) but is not payable under 38 CFR 3.1707(c). Under § 3.1707(c)(1), the plot or interment allowance payable based on burial in other than a State or Tribal veterans cemetery requires a veteran to be eligible for a burial allowance based on non-service-connected death under § 3.1705.

In summary, VA adopts the proposed rule as final, except for the technical amendments to 38 CFR 3.1703 and 3.1704 as described above.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant

economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). As this final rulemaking will expand and increase benefits, it will not have a significant economic impact on a substantial number of small entities as the benefits received by the entities entitled to them were found to be *de minimis*. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule includes provisions constituting revisions to a couple of current/valid collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The revisions also require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB has received the revised collections of information. OMB's receipt of the revised collections of information is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320, the revised collections of information associated with this rulemaking are not approved by OMB at this time. OMB's approval of the revised collections of information will occur within 30 days after the Final rulemaking publishes. If OMB does not approve the revised collections of information as requested, VA will immediately remove the provision containing a revised collection of information or take such other action as is directed by OMB.

The revised collections of information contained in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711 are described immediately following this paragraph, under its respective title.

Title: Application for Burial Benefits (Under 38 U.S.C. Chapter 23).

VA Form No: 21P-530EZ.

OMB Control No: 2900-0003.

CFR Provisions: 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711.

• *Summary of revised collection of information:* The revised collection of information in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, and 3.1711 will require the respondent to provide information indicating whether the Veteran was buried in a covered Veterans' cemetery.

• *Description of need for information and use of information:* VA, through the Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Under the authority of 38 U.S.C. 2302, 2303, 2304, 2307, and 2308, VA will pay burial benefits upon the death of a Veteran to certain eligible claimants. The information will be used by VA to determine if the claimant is eligible to receive expanded transportation benefits due to the Veteran's burial in a covered Veterans' cemetery.

• *Description of likely respondents:* The respondent population for VA Form 21P-530EZ will be primarily composed of survivors of deceased Veterans establishing eligibility to VA burial benefits.

• *Estimated number of respondents:* 132,055 per year.

• *Estimated frequency of responses:* One time per year.

• *Estimated average burden per response:* 30 minutes.

• *Estimated total annual reporting and recordkeeping burden:* 66,028 burden hours (132,055 × 30/60).

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$2,078,561.44 (66,028 burden hours × \$31.48 per hour).

* To estimate the total information collection burden cost, VA used the 2023 Bureau of Labor Statistics (BLS) mean hourly wage for hourly wage for "all occupations" of \$31.48 per hour. This information is available at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

The revised collection of information contained in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711 is described immediately following this paragraph, under its respective title.

Title: State or Tribal Organization Application for Interment Allowance (Under 38 U.S.C. Chapter 23).

VA Form No: 21P-530a.

OMB Control No: 2900-0565.

CFR Provisions: 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, 3.1711.

• *Summary of revised collection of information:* The revised collection of information in 38 CFR 3.1700, 3.1701, 3.1702, 3.1703, 3.1704, 3.1705, 3.1706, 3.1707, 3.1708, 3.1709, and 3.1711 will require the respondent to provide information to determine if a Tribal organization is eligible for interment allowance for an eligible Veteran buried on trust land owned by, or held in trust for, a Tribal organization.

• *Description of need for information and proposed use of information:* VA, through VBA, administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Under the authority of 38 U.S.C. 2302, 2303, 2304, 2307, and 2308, VA will pay burial benefits upon the death of a Veteran to certain eligible claimants. The information will be used by VA to determine if a Tribal organization is eligible to receive plot or interment benefit due to the Veteran's burial on trust land owned by, or held in trust for, a Tribal organization.

• *Description of likely respondents:* The respondent population for VA Form 21P-530a will be composed of individuals from State or Tribal Organizations that are applying for benefits to establish entitlement to the plot or interment allowance for eligible Veterans who have been buried in a State Veterans' cemetery or on Tribal Trust land.

• *Estimated number of respondents:* 33,594 per year.

• *Estimated frequency of responses:* One time per year.

• *Estimated average burden per response:* 5 minutes.

• *Estimated total annual reporting and recordkeeping burden:* The burden hours are estimated to be 2,800 (33,594 × 5/60).

• *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be \$88,144 (2,800 burden hours for respondents × \$31.48 per hour).

* To estimate the total information collection burden cost, VA used the 2023 Bureau of Labor Statistics (BLS) mean hourly wage for hourly wage for "all occupations" of \$31.48 per hour. This information is available at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801

et seq.), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on September 19, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart B—Burial Benefits

■ 1. The authority citation for part 3, subpart B, is revised to read as follows:

Authority: 105 Stat. 386, 38 U.S.C. 501(a), 2303–2308, unless otherwise noted.

■ 2. Amend § 3.1700 by revising paragraph (b) to read as follows:

§ 3.1700 Types of VA burial benefits.

* * * * *

(b) *Definitions.* For the purposes of this subpart:

(1) *Burial* means all the legal methods of disposing of the remains of a deceased person, including, but not limited to, cremation, burial at sea, and medical school donation.

(2) *Covered veterans' cemetery* is a designation for an eligible cemetery considered in the determination of transportation benefits under § 3.1709 that meets the following criteria:

(i) A deceased veteran as described in 38 U.S.C. 2308(b) is eligible to be buried within the cemetery;

(ii) The cemetery is either owned by a State or is on trust land owned by, or held in trust for, a Tribal organization; and

(iii) The cemetery is one for which the Secretary has made a grant under 38 U.S.C. 2408.

* * * * *

■ 3. Amend § 3.1701 by:

■ a. Removing the citation "38 U.S.C. 2302" and adding in its place "38 U.S.C. 2303"; and

■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 3.1701 Deceased veterans for whom VA may provide burial benefits.

* * * * *

(Authority: 38 U.S.C. 101(2), 2303, 2307, 2308)

■ 4. Amend § 3.1702 by revising paragraphs (a)(2), (b)(1) introductory text, (c)(2) introductory text, and the authority citation at the end of the section to read as follows:

§ 3.1702 Persons who may receive burial benefits; priority of payments.

* * * * *

(a) * * *

* * * * *

(2) VA may grant additional burial benefits, including the plot or interment allowance under § 3.1707, the transportation benefit under § 3.1709, and the service-connected burial allowance under § 3.1704, to the surviving spouse or any other eligible person in accordance with paragraph (b) of this section and based on a claim described in § 3.1703.

(b) * * *

(1) Except for claims a State, an agency or political subdivision of a State, or a Tribal organization files under § 3.1707 or § 3.1708, VA will pay, upon the death of a veteran, the first living person to file of those listed in paragraphs (b)(1)(i) through (v) of this section:

* * * * *

(c) * * *

* * * * *

(2) Claims for the plot or interment allowance (except for claims filed by a State, an agency or political subdivision thereof, or a Tribal organization) under § 3.1707 may be executed by:

* * * * *

(Authority: 38 U.S.C. 2303, 2307, 2308)

■ 5. Amend § 3.1703 by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 3.1703 Claims for burial benefits.

(a) * * *

(1) *General rule.* Except as provided in paragraph (a)(2) of this section, VA must receive a claim for the non-service-connected burial allowance for veterans described within § 3.1705(b) or § 3.1708(b) no later than 2 years after the burial of the veteran. There are no other time limitations to file claims for burial benefits under subpart B of this part.

* * * * *

(b) * * *

(2) *Payment for transportation expenses.* In order to pay transportation

costs, VA must receive supporting documentation, preferably on letterhead, showing who incurred the costs, the name of the deceased veteran, the specific transportation expenses incurred, and the dates of the services rendered.

* * * * *

■ 6. Amend § 3.1704 by revising paragraphs (c)(1) and (2) to read as follows:

§ 3.1704 Burial allowance based on service-connected death.

* * * * *

(c) * * *

(1) VA may pay the transportation benefit under § 3.1709; and

(2) VA may pay the plot or interment allowance under § 3.1707(b).

* * * * *

■ 7. Amend § 3.1705:

■ a. In paragraph (a), by removing the citation “38 U.S.C. 2302” and adding in its place “38 U.S.C. 2303”; and

■ b. By revising paragraph (e) and the authority citation at the end of the section.

The revisions read as follows:

§ 3.1705 Burial allowance based on non-service-connected death.

* * * * *

(e) *Additional benefits available based on non-service-connected death.*

In addition to the non-service-connected burial allowance authorized by this section:

(1) VA may pay the transportation benefit under § 3.1709; and

(2) VA may pay the plot or interment allowance under § 3.1707.

(Authority: 38 U.S.C. 2303, 2304, 2308)

■ 8. Amend § 3.1706 by revising paragraphs (d)(1) and (2) and the authority citation at the end of the section to read as follows:

§ 3.1706 Burial allowance for a veteran who dies while hospitalized by VA.

* * * * *

(d) * * *

(1) VA may pay the transportation benefit under § 3.1709; and

(2) VA may pay the plot or interment allowance under § 3.1707.

(Authority: 38 U.S.C. 2303, 2308)

■ 9. Amend § 3.1707 by revising paragraph (b) and the paragraph heading to paragraph (c) to read as follows:

§ 3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.

* * * * *

(b) *Plot or interment allowance for burial in a State or Tribal veterans cemetery.* VA will pay the plot or

interment allowance in the amount specified in 38 U.S.C. 2303(b)(1) (without regard to whether any other burial benefits were provided for that veteran) to a State, an agency or political subdivision of a State, or a Tribal organization that provided a burial plot or interment for the veteran without charge if the State, agency or political subdivision of the State, or Tribal organization:

(1) Is claiming the plot or interment allowance for burial of the veteran in a cemetery, or section of a cemetery, owned by the State, agency or subdivision of the State, or on trust land owned by, or held in trust for, a Tribal organization;

(2) Did not charge for the expense of the plot or interment; and

(3) Uses the cemetery or section of a cemetery solely for the interment of:

(i) Persons eligible for burial in a national cemetery; and

(ii) In a claim based on a veteran's death after October 31, 2000, either:

(A) Deceased members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery;

(B) Deceased former members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery who were discharged or released from service under conditions other than dishonorable; or

(C) Individuals described in 38 U.S.C. 2408(i)(2).

(c) *Plot or interment allowance payable based on burial in other than a State or Tribal veterans cemetery.* * * *

* * * * *

■ 10. Amend § 3.1708:

■ a. In paragraph (a), by removing the citation “38 U.S.C. 2302” and adding in its place “38 U.S.C. 2303”; and

■ b. By revising paragraph (c) and the authority citation at the end of the section.

The revisions read as follows:

§ 3.1708 Burial of a veteran whose remains are unclaimed.

* * * * *

(c) *Additional benefit for transportation of unclaimed remains.* In addition to the burial allowance authorized by this section, VA may pay the transportation benefit under § 3.1709.

* * * * *

(Authority: 38 U.S.C. 2303, 2308)

■ 11. Amend § 3.1709 by:

■ a. Revising the section heading and paragraphs (a), (b), and (c); and

■ b. Removing the word “reimburse” and adding in its place “pay” In paragraph (d)(1);

The revisions read as follows:

§ 3.1709 Transportation expenses for burial.

(a) *General.* VA will pay the transportation expenses, subject to paragraph (d) of this section, of a veteran's remains to the place of burial for a veteran described in paragraph (b) of this section or for burial in a national cemetery or a covered veterans' cemetery, as defined in § 3.1700(b)(2), for a veteran described in paragraph (c) of this section.

(b) *Eligibility for transportation to the place of burial under 38 U.S.C. 2303(a).* VA will pay the expense incurred to transport an eligible veteran's remains to the place of burial, subject to paragraph (d) of this section, where the death occurs within a State and the place of burial is in the same State or any other State.

(1) A veteran described in this paragraph is a deceased veteran who meets any of the following criteria:

(i) A veteran covered under 38 CFR 3.1705(b), or a veteran who died of a service-connected disability and who also satisfies the criteria listed under 38 CFR 3.1705(b)).

(ii) A veteran covered under 38 CFR 3.1706(b).

(iii) A veteran covered under 38 CFR 3.1708(b).

(2) A payment authorized under paragraph (b) of this section shall not duplicate any payment authorized under paragraph (c) of this section.

(c) *Eligibility for transportation benefit under 38 U.S.C. 2308.* For a veteran described below, VA will pay for the expense incurred, subject to paragraph (d) of this section, to transport a veteran's remains for burial in a national cemetery or a covered veterans' cemetery, as defined in 38 CFR 3.1700(b)(2).

(1) A veteran described in this paragraph is a deceased veteran who:

(i) Died as the result of a service-connected disability and who is not eligible for the transportation benefit under paragraph (b) of this section; or

(ii) Died outside of a State.

(2) The amount payable under this paragraph (c) will not exceed the cost of transporting the remains to the national cemetery closest to the veteran's last place of residence in which burial space is available and is subject to the limitations set forth in paragraph (d) of this section.

(3) A payment authorized under this paragraph (c) shall not duplicate any payment authorized under paragraph (b) of this section.

* * * * *

■ 12. Amend § 3.1711 by:

■ a. Revising paragraph (a) introductory text;

■ b. Removing the citation "38 U.S.C. 2302" and adding in its place "38 U.S.C. 2303" In paragraph (b)(1); and

■ c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 3.1711 Effect of contributions by government, public, or private organizations.

(a) *Contributions by government or employer.* With respect to claims for a plot or interment allowance under § 3.1707, if VA has evidence that the U.S., a State, any agency or political subdivision of the U.S. or of a State, Tribal organization, or the employer of the deceased veteran has paid or contributed payment to the veteran's plot or interment expenses, VA will pay the claimant up to the lesser of:

* * * * *

(Authority: 38 U.S.C. 2303)

[FR Doc. 2024–21864 Filed 9–24–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0197; FRL–11981–02–R9]

Air Plan Revisions; California; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State implementation plan (SIP) revisions from the Sacramento Metropolitan Air Quality Management District (SMAQMD or "District") to address Clean Air Act (CAA or "Act") requirements related to the 2008 8-hour ozone national ambient air quality standards (NAAQS or "standards"). These revisions concern emissions of oxides of nitrogen (NO_x) from boilers, gas turbines, and miscellaneous ("misc") combustion units as well as reasonably available control technology (RACT) requirements for major sources of NO_x in the portion of the Sacramento Metro, CA, nonattainment area that is subject to SMAQMD jurisdiction.

DATES: This rule is effective October 25, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2024–0197. 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, 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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Eugene Chen, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4304 or by email at chen.eugene@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us," and "our" refer to the EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
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V. Statutory and Executive Order Reviews

I. Proposed Action

On July 2, 2024, the EPA proposed to approve the California Air Resources Board's (CARB) submittal of a SIP revision adopted by the SMAQMD.¹ As discussed in our proposed action, this SIP revision adopted portions of several permits issued under the District's SIP-approved New Source Review (NSR) permit program ("District Permits") for submittal into the SIP. These District Permits are relied upon to implement RACT for major sources of NO_x, and we proposed to determine that these District Permits would comply with the EPA's Startup, Shutdown, and Malfunction (SSM) policy and other applicable Clean Air Act (CAA or "Act") requirements. Based on our review, we proposed to determine that these District Permits, in conjunction with the SIP-approved NO_x limits already established in Rule 411 (NO_x from Boilers, Process Heaters and Steam Generators) and Rule 413 (Stationary Gas Turbines), implement RACT for each major NO_x source in the District. We therefore also proposed to approve

¹ 89 FR 54748.

the major source NO_x RACT element of the 2017 RACT SIP for the 2008 ozone NAAQS.

the 2017 RACT SIP for the 2008 ozone NAAQS.

TABLE 1—SUBMITTED DOCUMENTS

Local agency	Document/ rule No.	Document title	Adopted	Submitted
SMAQMD		Reasonably Available Control Technology (RACT) Permits for Major Stationary Sources of Nitrogen Oxides.	03/28/2024	04/11/2024

A list of individual permits contained in this submittal is included in Table 2 below.

TABLE 2—DISTRICT PERMITS INCLUDED IN APRIL 11, 2024 SUBMITTAL

Source name	Permit No.	Unit name/ID	Unit size (MMBtu/hr)	Unit type
Mitsubishi Chemical Carbon Fiber and Composites.	24611	Oxidation Oven 1	2	Misc Combustion Unit.
	25925	Oxidation Oven 2	2	Misc Combustion Unit.
	24613	Oxidation Oven 3	2	Misc Combustion Unit.
	24614	Oxidation Oven 4	2	Misc Combustion Unit.
	27336	Oxidation Oven—Line 31	3	Misc Combustion Unit.
	27337	Oxidation Oven—Line 31	3	Misc Combustion Unit.
UC Davis Medical Center	27338	Cleaver Brooks Boiler	6	Boiler.
	17549	Combined Cycle Turbine	260	Gas Turbine.
	20216	Boiler 1	32	Boiler.
	20217	Boiler 2	32	Boiler.
	20218	Boiler 3	32	Boiler.
	20219	Boiler 4	32	Boiler.
Sacramento Metropolitan Utility District (SMUD) Procter & Gamble Power Plant.	27140	Babcock & Wilcox Boiler	109	Boiler.
	27141 and 27132 ..	Gas Turbine 1A	583	Gas Turbine and Duct Burner. ^a
	27142 and 27133 ..	Gas Turbine 1B	583	Gas Turbine and Duct Burner. ^a
	27143	Gas Turbine 1C	500	Gas Turbine.
	27144	Boiler 1B	109	Boiler.
SMUD Cosumnes Power Plant	25801	Turbine 2	2,200	Gas Turbine.
	25800	Turbine 3	2,200	Gas Turbine.
SMUD Campbell Power Plant	27118 and 27116 ..	Gas Turbine	1,410	Gas Turbine and Duct Burner. ^a
SMUD Carson Power Plant	27151 and 27153 ..	Gas Turbine	600	Gas Turbine and Duct Burner. ^a
	27154	Cleaver Brooks Boiler	100	Boiler.
	27156	Turbine 27156	450	Gas Turbine.

^a These units are combined cycle gas turbines, which consist of a simple cycle gas turbine combined with a duct burner, and are listed under the same permit document with separate permit numbers. For clarity, we are including the duct burner permit number in addition to the turbine permit number.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted on the proposed action, and there is no change to our assessment of the SIP revision as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving these District Permits into the California SIP. In addition, we are approving the major source NO_x element for SMAQMD's RACT obligation for the 2008 ozone NAAQS. This approval corrects all deficiencies identified in our June 30, 2023 partial disapproval of the major NO_x element

of the 2017 RACT SIP (88 FR 42248), permanently stopping all sanction clocks associated with that partial disapproval. Moreover, this approval corrects the final remaining deficiency identified in our February 3, 2017 finding of failure to submit action for the SMAQMD's 2008 ozone NAAQS RACT SIP obligation (82 FR 9158). In addition, it terminates the EPA's obligation to promulgate a Federal Implementation Plan in response to that action.

IV. 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 the District Permits contained in the

submitted SIP revision and listed in Table 2 of this preamble, which establish NO_x emission limits for specific major sources in the District. The EPA has made, and will continue to make, these documents available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the 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, the 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 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 Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The 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.” 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.”

The District did not evaluate EJ 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 goals of Executive Order 12898 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act (CRA), and the 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 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 25, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 18, 2024.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title

40 of the Code of Federal Regulations 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 F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(599)(ii)(A)(2) and (c)(617) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(599) * * *

(ii) * * *

(A) * * *

(2) The Reasonably Available Control Technology (RACT) determination for non-CTG major sources of NO_x as contained in the RACT State Implementation Plan (SIP) for the 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) (“Demonstration of Reasonably Available Control Technology for the 2008 Ozone NAAQS”), as adopted on March 23, 2017.

* * * * *

(617) The following regulations and materials were submitted electronically on April 11, 2024, by the Governor’s designee as an attachment to a letter dated April 10, 2024.

(i) *Incorporation by reference.* (A) Sacramento Metropolitan Air Quality Management District.

(1) Permit to Operate No. 24611—Eisenmann Oxidation Oven 1, issued to Mitsubishi Chemical Carbon Fiber & Composites, Inc., as revised on February 23, 2024.

(2) Permit to Operate No. 25925—Maxon Oxidation Oven 2, issued to Mitsubishi Chemical Carbon Fiber & Composites, Inc., as revised on February 23, 2024.

(3) Permit to Operate No. 24613—Eisenmann Oxidation Oven 3, issued to Mitsubishi Chemical Carbon Fiber & Composites, Inc., as revised on February 23, 2024.

(4) Permit to Operate No. 24614—Eisenmann Oxidation Oven 4, issued to Mitsubishi Chemical Carbon Fiber & Composites, Inc., as revised on February 23, 2024.

(5) Permit to Operate No. 27336—Despatch Oxidation Oven Line 31, issued to Mitsubishi Chemical Carbon Fiber and Composites Inc., as revised on February 23, 2024.

(6) Permit to Operate No. 27337—Despatch Oxidation Oven Line 31,

issued to Mitsubishi Chemical Carbon Fiber and Composites Inc., as revised on February 23, 2024.

(7) Permit to Operate No. 27338—Cleaver Brooks Boiler, issued to Mitsubishi Chemical Carbon Fiber and Composites Inc., as revised on February 23, 2024.

(8) Permit to Operate No. 17549—General Electric Gas Turbine, issued to UCD Medical Center, as revised on February 23, 2024.

(9) Permit to Operate No. 20216—Johnston Boiler Company Boiler 1, No. 20217—Johnston Boiler company Boiler 2, No. 20218—Johnston Boiler Company Boiler 3, No. 20219—Johnston Boiler Company Boiler 4, issued to UCD Medical Center, as revised on February 23, 2024.

(10) Permit to Operate No. 27140—Babcock & Wilcox Boiler, issued to Sacramento Municipal Utility District Financing Authority DBA Procter and Gamble Power Plant, as revised on February 23, 2024.

(11) Permit to Operate No. 27141—General Electric Gas Turbine 1A and No. 27132—Duct Burner 1A, issued to Sacramento Municipal Utility District Financing Authority DBA Procter and Gamble Power Plant, as revised on February 23, 2024.

(12) Permit to Operate No. 27142—General Electric Gas Turbine 1B and No. 27133—Duct Burner 1B, issued to Sacramento Municipal Utility District Financing Authority DBA Procter and Gamble Power Plant, as revised on February 23, 2024.

(13) Permit to Operate No. 27143—General Electric Gas Turbine 1C, issued to Sacramento Municipal Utility District Financing Authority DBA Procter and Gamble Power Plant, as revised on February 23, 2024.

(14) Permit to Operate No. 27144—Cleaver Brooks Boiler 1B, issued to Sacramento Municipal Utility District Financing Authority DBA Procter and Gamble Power Plant, as revised on February 23, 2024.

(15) Permit to Operate No. 25801—General Electric Gas Turbine 2, issued to Sacramento Municipal Utility District Financing Authority (SFA)—Cosumnes Power Plant, as revised on February 23, 2024.

(16) Permit to Operate No. 25800—General Electric Gas Turbine 3, issued to Sacramento Municipal Utility District Financing Authority (SFA)—Cosumnes Power Plant, as revised on February 23, 2024.

(17) Permit to Operate No. 27118—Siemens Gas Turbine and No. 27116—Duct Burner, issued to Sacramento Municipal Utility District Financing

Authority DBA Campbell Power Plant, as revised on February 23, 2024.

(18) Permit to Operate No. 27151—General Electric Gas Turbine and No. 27153—Duct Burner, issued to Sacramento Municipal Utility District Financing Authority DBA Carson Power Plant, as revised on February 23, 2024.

(19) Permit to Operate No. 27154—Cleaver Brooks Boiler, issued to Sacramento Municipal Utility District Financing Authority DBA Carson Power Plant, as revised on February 23, 2024.

(20) Permit to Operate No. 27156—General Electric Gas Turbine, issued to Sacramento Municipal Utility District Financing Authority DBA Carson Power Plant, as revised on February 23, 2024.

(B) [Reserved]

(ii) *Additional materials.* (A) Sacramento Metropolitan Air Quality Management District.

(1) “State Implementation Plan Submittal: Reasonably Available Control Technology (RACT) Permits for Major Stationary Sources of Nitrogen Oxides,” dated February 26, 2024.

(2) [Reserved]

(B) [Reserved]

* * * * *

§ 52.237 [Amended]

■ 3. Section 52.237 is amended by removing and reserving paragraph (b)(1)(iii).

[FR Doc. 2024–21729 Filed 9–24–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240315–0081; RTID 0648–XE321]

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; 2024 Blueline Tilefish Commercial Quota Harvested

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: Federal commercial tilefish permit holders are prohibited from fishing for, catching, possessing, transferring or landing blueline tilefish in the Tilefish Management Unit for the remainder of the 2024 fishing year. This action is required because NMFS has determined that 100 percent of the 2024 total allowable landings have been

caught. This action is intended to prevent over-harvest of blueline tilefish for the fishing year.

DATES: Effective September 23, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Douglas Potts, Fishery Policy Analyst, douglas.potts@noaa.gov, 978–281–9241.

SUPPLEMENTARY INFORMATION:

Regulations for the blueline tilefish fishery are at 50 CFR part 648. The regulations at § 648.295(b)(2)(ii) require that when NMFS projects that blueline tilefish catch will reach 100 percent of the total allowable landings (TAL), the Regional Administrator must close the commercial blueline tilefish fishery for the remainder of the fishing year. No vessel may retain or land blueline tilefish in or from the Tilefish Management Unit after the announced closure date. NMFS monitors the blueline tilefish fishery catch based on dealer reports, state data, and other available information. NMFS must publish a notice in the **Federal Register** notifying blueline tilefish vessel and dealer permit holders of the closure date when 100 percent of the TAL is projected to be landed.

The Regional Administrator has determined, based on dealer reports and other available information, that the blueline tilefish commercial fishery has caught 100 percent of the TAL. Effective September 23, 2024 vessels may not retain or land blueline tilefish in or from the Tilefish Management Unit through December 31, 2024.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the delayed effectiveness period because it would be contrary to the public interest and impracticable. Data and other information indicating the blueline tilefish commercial fishery has landed 100 percent of the TAL have only recently become available. Landings data are updated by dealer reports dealers on a weekly basis, and NMFS monitors data as catch increases toward the limit. This action is routine and formulaic. The regulations at § 648.295(b)(2)(ii) require such action to ensure that blueline tilefish commercial vessels do not exceed the 2024 TAL. If implementation of this action is

delayed, the Annual Catch Limit for the 2024 fishing year may be exceeded, thereby undermining the conservation objectives of the Tilefish Fishery Management Plan. Also, the public had

prior notice and full opportunity to comment on this process when the provisions regarding closures and the 2024 quota levels were put in place.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 20, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–22033 Filed 9–23–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 186

Wednesday, September 25, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-2315; Project Identifier AD-2023-00537-T]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737-800 series airplanes. This proposed AD was prompted by a determination that the compliance time for the initial ultrasonic inspection required by AD 2019-11-06 is insufficient for certain airplanes. This proposed AD would require reducing the compliance time for the ultrasonic inspection of the skin under the drag link assembly. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 12, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2315; or in person at

Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Boeing material identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website myboeingfleet.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA.

FOR FURTHER INFORMATION CONTACT:

Owen Bley-Male, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3992; email: owen.f.bley-male@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2024-2315; Project Identifier AD-2023-00537-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your

comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Owen Bley-Male, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3992; email: owen.f.bley-male@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2019-11-06, Amendment 39-19652 (84 FR 27193, June 12, 2019) (AD 2019-11-06) for certain The Boeing Company Model 737-600, 737-700, 737-700C, 737-800, 737-900, and 737-900ER series airplanes. AD 2019-11-06 requires ultrasonic inspections of the skin under the drag link assembly for cracks and applicable on-condition actions. The FAA issued AD 2019-11-06 to address cracking in the station (STA) 540 bulkhead chord or skin, which could result in the inability of a primary structural element to sustain limit load.

Since issuing AD 2019-11-06, the FAA has received a report that, for Model 737-800 series airplanes that have been modified to a freighter configuration using Boeing Drawing 800A0003, an evaluation of structural stresses using revised stress level calculations found that the inspection thresholds required by AD 2019-11-06 were insufficient. Those airplanes are subject to additional structural stresses due to the modifications done during conversion to a freighter configuration. Therefore, the compliance times for the initial inspections required by AD 2019-11-06 could be performed on those airplanes after the appropriate inspection threshold has passed, which could result in undetected cracking in the STA 540 bulkhead chord or skin. The FAA determined that, for those airplanes, a reduced compliance time is

needed to address the unsafe condition. Accomplishing the actions required by this proposed AD would replace the initial ultrasonic inspections required by paragraph (g) of AD 2019–11–06 for Model 737–800 airplanes converted to a freighter configuration using Boeing Drawing 800A0003.

This condition, if not addressed, could lead to undetected cracking in the STA 540 bulkhead chord or skin, which could result in possible rapid decompression and loss of structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018. This material specifies an ultrasonic inspection of the skin under the drag link assembly and repair for any cracks; repetitive inspections for any cracks, including ultrasonic inspections, high frequency eddy current inspections, low frequency eddy current inspections, and detailed inspections; and a preventative modification if no crack is found.

The FAA also reviewed Boeing 737–800BCF Airworthiness Limitations, D140A006, Revision L, dated April 1, 2021. This material contains required inspections for principal structural element items. Section 5.2.1 of this material identifies the airplanes affected by this proposed AD.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would reduce the compliance time for the initial ultrasonic inspection required by AD 2019–11–06 for Model 737–800 series airplanes that have been converted to a freighter configuration using Boeing Drawing 800A0003.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 18 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Initial inspection	Up to 23 work-hours × \$85 per hour = \$1,955	\$0	\$1,955	Up to \$35,190.

The FAA estimates the following costs to do any on-condition actions that would be required based on the results

of the proposed inspection. The agency has no way of determining the number

of airplanes that might need these actions:

ESTIMATED COSTS FOR ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 56 work-hours × \$85 per hour = \$4,760	\$24,020	Up to \$28,780.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

The Boeing Company: Docket No. FAA–2024–2315; Project Identifier AD–2023–00537–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 12, 2024.

(b) Affected ADs

This AD affects AD 2019–11–06, Amendment 39–19652 (84 FR 27193, June 12, 2019) (AD 2019–11–06).

(c) Applicability

This AD applies to The Boeing Company Model 737–800 series airplanes, certificated in any category, that have been converted to a freighter configuration using Boeing Drawing 800A0003 before April 1, 2021, and are identified as Group A in Section 5.2.1, “Effectivity,” of Boeing 737–800BCF Airworthiness Limitations, D140A006, Revision L, dated April 1, 2021.

Note 1 to paragraph (c): Airplanes with a 737–800BCF designation are Model 737–800 series airplanes that have been converted to a freighter configuration using Boeing Drawing 800A0003.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that the compliance time for the initial ultrasonic inspection of the skin under the drag link assembly required by AD 2019–11–06 must be reduced for certain airplanes. The FAA is issuing this AD to address cracking found in the station (STA) 540 bulkhead chord and skin, which could result in the inability of a primary structural element to sustain limit load. The unsafe condition, if not addressed, could result in possible rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Required Actions

(1) For airplanes identified as Group 1, Configuration 2, 3, 4, or 5, or as Group 5 in Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018: At the compliance time specified in paragraph (g)(1)(i), (ii), (iii), or (iv) of this AD, whichever occurs last, perform an ultrasonic inspection of the skin under the drag link assembly in accordance with the Accomplishment Instructions, Part 2, of Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018. Do all applicable on-condition actions for the Part 2 inspection at the times specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018, except where Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018, specifies contacting Boeing for repair instructions, this AD requires doing the repair using a method approved in accordance with paragraph (j) of this AD.

(i) Before the airplane accumulates 17,000 total flight cycles.

(ii) Within 5,000 flight cycles after July 17, 2019 (the effective date of AD 2019–11–06).

(iii) Within 12 months after the effective date of this AD.

(iv) Within 1,000 flight cycles after the effective date of this AD.

(2) For airplanes identified as Group 1, Configuration 1, 3, or 4 in Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018: At the compliance time specified in paragraph (g)(2)(i), (ii), (iii), or (iv) of this AD, whichever occurs last, perform an ultrasonic inspection of the repair tripler under the drag link assembly in accordance with the Accomplishment Instructions, Part 6, of Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018. Do all applicable on-condition actions for the Part 6 inspection at the times specified in paragraph 1.E., “Compliance,” of Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018, except where Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018, specifies contacting Boeing for repair instructions, this AD requires doing the repair using a method approved in accordance with paragraph (j) of this AD.

(i) Before the airplane accumulates 30,000 total flight cycles.

(ii) Within 5,000 flight cycles after July 17, 2019 (the effective date of AD 2019–11–06).

(iii) Within 12 months after the effective date of this AD.

(iv) Within 1,000 flight cycles after the effective date of this AD.

(i) Terminating Action for Certain Requirements of AD 2019–11–06

Accomplishing the actions required by this AD replaces the corresponding initial ultrasonic inspections and on-condition actions required by paragraph (g) of AD 2019–11–06 for Model 737–800 airplanes converted to a freighter configuration using Boeing Drawing 800A0003 only.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Owen Bley-Male, Aviation Safety

Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3992; email: owen.f.bley-male@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing 737–800BCF Airworthiness Limitations, D140A006, Revision L, dated April 1, 2021.

(ii) Boeing Alert Service Bulletin 737–53A1368, dated February 27, 2018.

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 19, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–21813 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2024–2314; Project Identifier MCAI–2024–00312–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; A320 series airplanes; and A321–211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes. This proposed AD was prompted by a determination that a

damage-tolerance and fatigue reassessment of nose landing gear (NLG) repairs is necessary for certain parts fitted on airplanes approved for operation in the Commonwealth of Independent States (CIS). This proposed AD would require repair and replacement of all affected parts, and introduces restrictions for the installation of affected parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 12, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2314; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2314.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

FOR FURTHER INFORMATION CONTACT:

Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone

206-231-3667; email Timothy.P.Dowling@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2024-2314; Project Identifier MCAI-2024-00312-T" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206-231-3667; email Timothy.P.Dowling@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2024-0022, dated January 23, 2024 (EASA AD 2024-0022) (also referred to as the

MCAI), to correct an unsafe condition for all Airbus SAS Model A319-111, A319-112, A319-113, A319-114, A319-115, A319-131, A319-132, A319-133, A319-151N, A319-153N, A320-211, A320-212, A320-214, A320-215, A320-216, A320-231, A320-232, A320-233, A320-251N, A320-252N, A320-253N, A320-271N, A320-272N, A320-273N, A321-211, A321-212, A321-213, A321-231, A321-232, A321-251N, A321-251NX, A321-252N, A321-252NX, A321-253N, A321-253NX, A321-271N, A321-271NX, A321-272N, and A321-272NX airplanes. Model A320-215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The MCAI states that a design review led to a determination that a damage-tolerance and fatigue reassessment of NLG repairs is required for certain parts fitted on airplanes approved for CIS operation. The EASA AD addresses the reassessment of these repairs. The unsafe condition, if not addressed, could lead to damage or failure of the affected parts and the NLG, and possible damage to the airplane and injury to occupants, following modifications for CIS operations.

Different runway standards in CIS countries have resulted in the need for specific landing gear modifications or repairs on those modified landing gears. The landing gear components modified for CIS runway conditions may be inadequate for continued operation. While it is possible there are few or no U.S. airplanes subject to the repair and replacement requirements of this AD, the FAA has determined that this AD is necessary to identify airplanes with affected parts and confirm the need for any follow-on actions.

The FAA is proposing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2314.

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2024-0022 specifies procedures for repair and replacement, as applicable, of the affected parts. EASA AD 2024-0022 also limits the installation of affected parts under certain conditions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA’s Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2024–0022 described previously, except for any differences

identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2024–0022 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2024–0022 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Using common terms that are the same as the heading of a particular section in EASA AD 2024–0022 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2024–0022. Service information required by EASA AD 2024–0022 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–2314 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,680 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$0	\$85	Up to \$142,800.

The FAA has received no definitive data on which to base the cost estimates for the repairs or replacements specified in this proposed AD. The cost of parts could be as high as \$5,620 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the

States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus SAS: Docket No. FAA–2024–2314; Project Identifier MCAI–2024–00312–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 12, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (3) of this AD, certificated in any category.

(1) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes.

(2) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(3) Model A321–211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a determination that a damage-tolerance and fatigue reassessment of nose landing gear (NLG) repairs is necessary for certain parts fitted on airplanes approved for operation in the

Commonwealth of Independent States (CIS). The FAA is issuing this AD to address the reassessment of these repairs. The unsafe condition, if not addressed, could lead to damage or failure of the affected parts and the NLG, and possible damage to the airplane and injury to occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0022, dated January 23, 2024 (EASA AD 2024–0022).

(h) Exceptions to EASA AD 2024–0022

(1) Where EASA AD 2024–0022 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the “Remarks” section of EASA AD 2024–0022.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (j) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: Except as required by paragraph (i)(2) of this AD, if any material contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone 206–231–3667; email Timothy.P.Dowling@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2024–0022, dated January 23, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0022 identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations, or email fr.inspection@nara.gov.

Issued on September 19, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–21811 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2024–N–3533]

Microbiology Devices; Reclassification of Antigen, Antibody, and Nucleic Acid-Based Hepatitis B Virus Assay Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed amendment; proposed order; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is proposing to reclassify qualitative hepatitis B virus (HBV) antigen assays, qualitative HBV antibody assays and quantitative assays that detect anti-HBs

(antibodies to HBV surface antigen (HBsAg)), and quantitative HBV nucleic acid-based assays, all of which are postamendments class III devices, into class II (general controls and special controls), subject to premarket notification. FDA is also proposing three new device classification regulations along with the special controls that the Agency believes are necessary to provide a reasonable assurance of safety and effectiveness for each device.

DATES: Either electronic or written comments on the proposed order must be submitted by November 25, 2024. Please see section X of this document for the proposed effective date when the new requirements apply and for the proposed effective date of a final order based on this proposed order.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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 Rulemaking 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-3533 for “Microbiology Devices; Reclassification of Antigen, Antibody, and Nucleic Acid-Based Hepatitis B Virus Assay Devices.” 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 Eastern Time, 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, the plain language summary of the proposed order of not more than 100 words consistent with the “Providing Accountability Through Transparency

Act,” 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:

Maria Ines Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3104, Silver Spring, MD 20993, 301-796-7017, Maria.Garcia@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (general controls and special controls), and class III (general controls and premarket approval).

Section 513(a)(1) of the FD&C Act defines the three classes of devices. Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under sections 501, 502, 510, 516, 518, 519, or 520 (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, or 360j) or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act). Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, and for which there is sufficient information to establish special controls to provide such assurance, including the issue of performance standards, postmarket surveillance, patient

registries, development and dissemination of guidelines, recommendations, and other appropriate actions the Agency deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act). Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Devices that were not in commercial distribution before May 28, 1976 (generally referred to as “postamendments devices”) are automatically classified by section 513(f)(1) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless, and until: (1) FDA reclassifies the device into class I or II, or (2) FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of the premarket notification procedures in section 510(k) of the FD&C Act and part 807, subpart E (21 CFR part 807, subpart E) of FDA’s regulations.

A postamendments device that has been initially classified in class III under section 513(f)(1) of the FD&C Act may be reclassified into class I or class II under section 513(f)(3) of the FD&C Act. Section 513(f)(3) of the FD&C Act provides that FDA, acting by administrative order, can reclassify the device into class I or class II on its own initiative, or in response to a petition from the manufacturer or importer of the device. To change the classification of the device, the proposed new class must have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

FDA relies upon “valid scientific evidence”, as defined in section 513(a)(3) of the FD&C Act and 21 CFR 860.7(c)(2), in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the “valid scientific evidence” upon which the Agency relies must be publicly available (see section 520(c) of the FD&C Act).

Publicly available information excludes trade secret and/or confidential commercial information, *e.g.*, the contents of a pending premarket approval application (PMA) (see section 520(c) of the FD&C Act).

In accordance with section 513(f)(3) of the FD&C Act, FDA is issuing this proposed order to reclassify qualitative HBV antigen assays intended for qualitative detection of HBV antigens as an aid in the diagnosis of acute or chronic HBV infection in specific populations, HBV antibody assays (including qualitative and quantitative anti-HBs) intended for use in the detection of antibodies to HBV, and quantitative HBV nucleic acid-based assays intended for use in the detection of HBV nucleic acid in specimens from individuals with antibody evidence of HBV infection, all of which are postamendments class III devices, into class II (general controls and special controls) subject to premarket notification, under three new device classification regulations with the names “Qualitative Hepatitis B Virus Antigen Assays,” “Hepatitis B Virus Antibody Assays,” and “Hepatitis B Virus Nucleic Acid-Based Assays.” FDA believes the standard in section 513(a)(1)(B) of the FD&C Act is met as there is sufficient information to establish special controls, which, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of these devices.¹

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide a reasonable assurance of the safety and effectiveness of HBV antigen assays, HBV antibody assays, and HBV nucleic acid-based assays for their intended uses, therefore, the Agency does not intend to exempt these proposed class II devices from the requirement for premarket notification (510(k)) submission as provided under section 510(m) of the FD&C Act. If this

proposed order is finalized, persons who intend to market this type of device must submit to FDA a premarket notification under section 510(k) of the FD&C Act prior to marketing the device.

II. Regulatory History of the Devices

Under section 513(f)(1) of the FD&C Act, qualitative HBV antigen assays, HBV antibody assays (including qualitative and quantitative anti-HBs), and quantitative HBV nucleic acid-based assays are automatically classified into class III because they were not introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, and have not been found substantially equivalent to a device placed in commercial distribution after May 28, 1976, which was subsequently classified or reclassified into class II or class I. Therefore, they are subject to PMA requirements under section 515 of the FD&C Act (21 U.S.C. 360e). Qualitative HBV antigen assays and HBV antibody assays (including qualitative and quantitative anti-HBs) are prescription devices and assigned product code LOM. Quantitative HBV nucleic acid-based assays are prescription devices and assigned product code MKT.

A. Qualitative HBV Antigen Assays

The first proposed device reclassification action applies to qualitative HBV antigen assay devices that are prescription in vitro diagnostic devices intended for qualitative detection of HBV antigens as an aid in the diagnosis of acute or chronic HBV infection in specific populations. On February 8, 2001, FDA approved its first HBV antigen assay (DiaSorin’s ETI-EBK PLUS) for use in the qualitative detection of hepatitis Be antigen (HBeAg) in human serum or plasma (ethylenediaminetetraacetic acid (EDTA), citrate, or heparin) as indicative of a laboratory diagnosis of HBV infection through its PMA process under section 515 of the FD&C Act. On June 1, 2001, FDA approved its first HBV surface antigen (HBsAg) assay (Roche Elecsys HBsAg Immunoassay, Elecsys HBsAg Confirmatory, and Precicontrol HBsAg) for the qualitative detection of HBsAg in human serum or plasma (heparin, EDTA, sodium citrate) in adult pregnant and non-pregnant individuals. In a May 22, 2002, **Federal Register** notice (67 FR 36009), FDA announced the approval order and the availability of the Summary of Safety and Effectiveness Data (SSED) for these devices. Since the first approval order for an HBV antigen assay issued on February 8, 2001, FDA has approved 16 additional original PMAs for qualitative

HBV antigen assays that are prescription devices intended for the detection of HBV antigens. These assays are intended as an aid in the diagnosis of acute or chronic HBV infection in conjunction with clinical findings and other diagnostic procedures (*e.g.*, HBV serology and antigen testing, liver function, etc.). These assays are not intended for use in screening of blood, plasma, cells, or tissue donors.

A review of the medical device reporting (MDR) databases indicates that there were 625 reported events for qualitative HBV antigen assays as of June 2024. Of these reported events, a significant majority of these were determined to be of no known impact or consequence to the patient. Events reported included false reactive results, false non-reactive results, incorrect or inadequate assay results, incorrect/inadequate/imprecise readings, improper or incorrect procedure or method, device operates differently than expected, and adverse event without identified device or use problems. Where incorrect results were obtained, it was not clear what the correct result should have been. As of June 2024, there have been no class III recalls, six class II recalls, and no class I recalls² involving qualitative HBV antigen assays. The class II recalls occurred since 2006 due to defective caps, device design, no marketing application, signal for reactive results, and biased results for biotin concentrations that were lower than indicated. No patient harm was identified. These facts, coupled with the low number of reported events that caused patient harm, indicate a good safety record for this device class. These recall events reflect the risks to health identified in section V below, and FDA believes the special controls proposed herein, in addition to general controls, can effectively mitigate the risks identified in these recalls.

B. HBV Antibody Assays (Including Qualitative and Quantitative Anti-HBs)

The second type of devices this proposed reclassification order applies to are qualitative HBV antibody assays and quantitative anti-HBs assays that are prescription in vitro diagnostic devices intended for use in the detection of antibodies to HBV. These devices are intended to aid in the diagnosis of HBV infection in persons with signs and symptoms of hepatitis and in persons at risk for HBV infection. On September 29, 2000, FDA approved its first qualitative HBV antibody assay (Ortho-Clinical Diagnostics, Inc.’s Vitros

¹ FDA notes that the “ACTION” caption for this proposed order is styled as “Proposed amendment; proposed order,” rather than “Proposed order.” Beginning in December 2019, this editorial change was made to indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of the Federal Register’s (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

² Class I, II, and III recalls are defined in 21 CFR 7.3(m).

Immunodiagnostic Products: Anti-HBS Reagent Pack/Anti-HBS Calibrators) for the qualitative in vitro determination of total antibody to hepatitis B surface antigen (anti-HBs) in human serum as an aid in determining susceptibility to HBV infection for individuals prior to or following HBV vaccination, or where vaccination status is unknown, and for use with other HBV serological markers for the laboratory diagnosis of HBV disease associated with HBV infection, through its PMA process under section 515 of the FD&C Act. In a March 12, 2001, **Federal Register** notice (66 FR 14390), FDA announced the approval order and the availability of the SSED for this device. On July 22, 2002, FDA approved its first quantitative Anti-HBs (Siemens Healthcare Diagnostics Products Ltd.'s Immulite 2000 XPI Anti-HBs) for the quantitative measurement of total antibodies to the hepatitis B surface antigen (anti-HBs) in human serum and plasma (heparinized or EDTA) as an aid in the determination of susceptibility to HBV infection for individuals prior to or following HBV vaccination, or where vaccination status is unknown, or for use with other HBV serological markers for the laboratory diagnosis of HBV disease associated with HBV infection, through its PMA process under section 515 of the FD&C Act.

Since the first approval order of a qualitative HBV antibody assay on September 29, 2000, FDA has approved 31 additional original PMAs for qualitative HBV antibody assays for the detection of antibodies to HBV. FDA has also approved six assays for quantitative anti-HBs detection. Qualitative HBV antibody assays and quantitative anti-HBs assays are intended to aid in the diagnosis of HBV infection in persons with signs and symptoms of hepatitis and in persons at risk for HBV infection in conjunction with clinical findings and other diagnostic procedures (e.g., HBV serology and antigen testing, liver function, etc.). These assays are not intended for use in screening of blood, plasma, cells, or tissue donors.

A review of the MDR databases indicates that there were 1,107 reported events for HBV antibody assays between years 2001 and June 2024. Of these reported events, a significant majority of these were of no known impact to the patient, and only four resulted in impact to patients such as misdiagnosis or viral infection. Events reported included adverse events without identified device or use problem, disconnection/low assay results, false non-reactive results, false reactive results, false high assay results (for example, the first assay result had a low signal to cutoff (s/co)

value and repeat testing produced a higher s/co value), incorrect assay results, inadequate assay results, and low assay results (for example, the first assay result was in the equivocal zone, repeat testing produced a non-reactive result, and testing with an alternate device produced a reactive result). In numerous cases, it was not possible to determine what the correct result should have been (further testing was not performed, insufficient sample volume, different assays were used). As of June 2024, FDA is aware of 4 class III recalls, 12 class II recalls, and no class I recalls for these devices. The class II recalls occurred in 2007, 2008, 2009, 2011, 2012, 2013, 2014, 2018, and 2019, and were related to issues such as false reactive results, false high assay results, defective caps, and errors in labeling, packaging, or software. No patient harm has been identified. These facts, coupled with the low number of reported events that impacted the patient, indicate a good safety record for this device class. These recall events reflect the risks to health identified in section V below, and FDA believes the special controls proposed herein, in addition to general controls, can effectively mitigate the risks identified in these recalls.

C. Quantitative HBV Nucleic Acid-Based Assays

Finally, the third type of device this proposed reclassification order applies to are quantitative HBV nucleic acid-based assay devices for use as a prescription in vitro diagnostic device intended for use in the detection of HBV nucleic acid in specimens from individuals with antibody evidence of HBV infection. On September 4, 2008, FDA approved its first quantitative HBV nucleic acid assay (Roche Molecular Systems, Inc.'s COBAS TaqMan HBV Test For Use With The High Pure System), an in vitro nucleic acid amplification assay for the quantitation of HBV deoxyribonucleic acid (DNA) in human serum or plasma (EDTA) intended for use as an aid in the management of patients with chronic HBV infection undergoing antiviral therapy, through its PMA process under section 515 of the FD&C Act.

Since the first approval order, FDA has approved four additional original PMAs for quantitative HBV nucleic acid-based assays for the quantitative detection of HBV DNA. The detection of HBV DNA is used for management of patients undergoing antiviral therapy for assessing response to treatment and not as a diagnostic for HBV infection.

The following section provides examples of the different technologies

used. The different technologies begin with specimen lysis and HBV DNA through hybridization with magnetic particles. The differences in the technologies occur with the method of amplification:

- In one technology, the target HBV DNA sequence is amplified. The presence of HBV amplification products is detected by measuring the fluorescence of the HBV probe that binds to the target. Similarly, the presence of the internal control amplification product is detected. In the absence of HBV or internal control target sequences, probe fluorescence is quenched. In the presence of HBV or internal control target, the HBV or internal control probes bind to their target.

- In another technology, target amplification occurs via transcription-based nucleic acid amplification by fluorescent labeled probes (torches). More torches hybridize when more amplicon is present creating a higher fluorescent signal. The time taken for the fluorescent signal to reach a threshold proportional to the starting HBV DNA concentration is measured in relation to internal controls.

A review of the MDR databases indicates that as of June 2024 there were 13 reported events for nucleic acid-based HBV DNA assays since the first reported event in 2009. MDRs were for the following reasons: (1) incorrect, inadequate, or imprecise result or readings; (2) high readings; and (3) non-reproducible results. Of these, two had no known impact or consequence to the patient and two occurred when the patient had no signs, symptoms, or conditions. As of June 2024, FDA is aware of one class III recall, five class II recalls, and no class I recalls for these devices. The class II recalls occurred between 2005 and 2022 and were related to issues such as misquantitation of high results for negative samples (carryover from a high positive sample tested adjacent to a negative sample may produce an incorrect positive result), liquid level detection of reagent cassette, under filled and over filled enzyme reagent vials in assay kits, software, and low level of recombinant HBV DNA found in one lot of reagent. These facts, coupled with the low number of reported events that impacted the patient, indicate a good safety record for this device class. These recall events reflect the risks to health identified in section V below, and FDA believes the special controls proposed herein, in addition to general controls, can effectively mitigate the risks identified in these recalls.

III. Device Description

The HBV assays that are the subject of this proposed order are postamendments prescription in vitro diagnostic devices classified into class III under section 513(f)(1) of the FD&C Act.

A. Qualitative HBV Antigen Assays

A qualitative HBV antigen assay is a prescription in vitro diagnostic device intended for use in the qualitative detection of HBV antigens and for use as an aid in the diagnosis of HBV infection in specific populations. HBV antigen assays aid in the diagnosis of acute or chronic HBV infection. HBV antigen assays typically detect the presence of Hepatitis B surface antigen (HBsAg) or Hepatitis B e antigen (HBeAg). HBV antigens (HBsAg and HBeAg), when present in samples, bind to anti-HBs or anti-HBe antibodies to form a complex that is bound to a solid phase (e.g., microparticles, microtiter plate or other technology). Detection of the complexes can be performed using different methods which measure the presence/absence of anti-HBs or anti-HBe antibodies in the sample.

Diagnosis of HBV infection should not be established based on a single assay result but should be determined in conjunction with clinical findings and other diagnostic procedures (e.g., HBV serology and antigen testing, liver function, etc.). These assays are not intended for use in screening of blood, plasma, cells, or tissue donors.

B. HBV Antibody Assays (Including Qualitative and Quantitative Anti-HBs)

A qualitative HBV antibody assay is a prescription in vitro diagnostic device intended for use in the qualitative detection of antibodies to HBV and for use as an aid in the diagnosis of HBV infection in specific populations. HBV antibody assays aid in the diagnosis of HBV infection in persons with signs and symptoms of hepatitis and in persons at risk for HBV infection. Antibody assays typically detect the presence of antibodies to HBsAg (anti-HBs), Hepatitis B core antigen (anti-HBc), or HBeAg (anti-HBe). Diagnosis of HBV infection should not be established based on a single assay result, but should be determined in conjunction with clinical findings and other diagnostic procedures (e.g., HBV serology and antigen testing, liver function, etc.). These assays are not intended for use in screening of blood, plasma, cells, or tissue donors.

A quantitative assay that detects anti-HBs (antibodies to HBV surface antigen (HBsAg)) is a prescription in vitro

diagnostic device that is intended for quantitative use to aid in the diagnosis of HBV infection in persons with signs and symptoms of hepatitis and in persons at risk for HBV infection. Detection of anti-HBs indicates a present or past infection with HBV and can be used in conjunction with clinical findings such as other HBV serological markers (detection of other HBV antigens and antibodies to HBV) for diagnosis of HBV infection. Anti-HBs assay results may be used as an aid in the determination of susceptibility to HBV infection in individuals prior to vaccination or when vaccination status is unknown.

In some device designs, HBV antibodies, when present in the sample, bind to HBV antigens to form a complex that is bound to a solid phase (e.g., microparticles, microtiter plate, or other technology). Detection of complexes can be performed using different methods that measure the presence/absence of HBV antibodies in the sample.

C. Quantitative HBV Nucleic Acid-Based Assays

A quantitative HBV nucleic acid-based assay is a prescription in vitro diagnostic device intended for use in the detection of HBV nucleic acid in specimens from individuals with antibody evidence of HBV infection. In these devices, the detection of HBV nucleic acid is used for management of patients undergoing antiviral therapy for assessing response to treatment and NOT as a diagnostic for HBV infection.

FDA is proposing to reclassify qualitative HBV antigen, HBV antibody assays (including qualitative and quantitative anti-HBs), and quantitative HBV nucleic acid-based assays from class III (general controls and premarket approval) to class II (general controls and special controls) and to establish new names for the device types that will be within the classification regulations. FDA proposes to revise 21 CFR part 866 to create three new device classification regulations with the names “Qualitative Hepatitis B Virus Antigen Assays,” “Hepatitis B Virus Antibody Assays,” and “Hepatitis B Virus Nucleic Acid-Based Assays.” FDA believes that these names and proposed identification language most accurately describe these devices.

- A Qualitative Hepatitis B Virus (HBV) Antigen Assay is tentatively identified as an in vitro diagnostic device intended for prescription use for qualitative use with human serum, plasma, or other matrices that aids in the diagnosis of chronic or acute HBV infection. HBV surface antigen (HBsAg) is also used for screening of HBV

infection in pregnant women to identify neonates who are at risk of acquiring hepatitis B during perinatal period. The assay is not intended for screening of blood, plasma, cells, or tissue donors.

- A Hepatitis B Virus (HBV) Antibody Assay is tentatively identified as an in vitro diagnostic device intended for prescription use in the detection of antibodies to HBV in human serum and plasma, or other matrices, and or as an aid in the diagnosis of HBV infection in persons with signs and symptoms of hepatitis and in persons at risk for hepatitis B infection. In addition, anti-HBc IgM (IgM antibodies to core antigen) assay is indicative of recent HBV infection. Anti-HBs (antibodies to surface antigen) assay results may be used as an aid in the determination of susceptibility to HBV infection in individuals prior to or following HBV vaccination or when vaccination status is unknown. The assay is not intended for screening of blood, plasma, cells, or tissue donors. The assay is intended as an aid in diagnosis in conjunction with clinical findings and other diagnostic procedures.

- A Hepatitis B Virus (HBV) Nucleic Acid-Based Assay is tentatively identified as an in vitro diagnostic device intended for prescription use in the detection of HBV nucleic acid in specimens from individuals with antibody evidence of HBV infection. In these devices, the detection of HBV nucleic acid is used as an aid in the management of HBV-infected individuals. The assay is intended for use with human serum or plasma (and other matrices as applicable) from individuals with HBV. The assay is not intended for use as a donor screening assay for the presence of HBV nucleic acids in blood, blood products, plasma, cells, or tissue donors.

Based upon our review experience and consistent with the FD&C Act and FDA's regulations in 21 CFR 860.134, FDA believes that these devices should be reclassified from class III into class II with special controls because there is sufficient information to establish special controls that, along with general controls, can provide reasonable assurance of the devices' safety and effectiveness.

IV. Proposed Reclassification and Summary of Reasons for Reclassification

FDA is proposing to reclassify the HBV assays that are the subject of this proposed order. On September 7, 2023, the Microbiology Devices Panel (Panel) of the Medical Devices Advisory Committee convened to discuss and make recommendations regarding the

reclassification of HBV assays from class III (general controls and premarket approval) to class II (general controls and special controls) (<https://www.fda.gov/media/173609/download>). Panel members unanimously agreed that special controls, in addition to general controls, are necessary and sufficient to mitigate the risks to health of patients presented by these devices and to provide reasonable assurance of the safety and effectiveness of these devices (Refs. 1 and 2). The Panel agreed with FDA-identified risks and identified additional risk(s) and benefit(s) to include in the overall risk assessment. The Panel also discussed potential mitigation measure(s)/control(s) FDA should consider for each of the identified risks and recommended that, as part of any reclassification, the expected performance for these devices should remain the same. Notably, the performance of approved HBV antigen assays has generally been at least 97 percent sensitivity and 99 percent specificity. For approved anti-HBs, anti-Hbe, and anti-HBc total assays the sensitivity has generally been at least 95 percent, for approved anti-HBc IgM assays the sensitivity has been at least 86 percent, and for all HBV approved antibody assays the specificity has generally been above 97 percent.

FDA believes that at this time, sufficient data and information exist such that the risks identified in section V below can be mitigated by establishing special controls, and that these special controls, together with general controls, are necessary to provide a reasonable assurance of the safety and effectiveness of these HBV assays and therefore proposes these devices to be reclassified from class III (general controls and premarket approval) to class II (general controls and special controls). In accordance with section 513(f)(3) of the FD&C Act and 21 CFR part 860, subpart C, FDA is proposing to reclassify qualitative HBV antigen assays, HBV antibody assays (including qualitative and quantitative anti-HBs), and quantitative HBV nucleic acid-based assays from class III into class II, subject to premarket notification (510(k)) requirements. FDA believes that there is sufficient information available to FDA through FDA's accumulated experience with these devices from reviewing the PMAs for these HBV assays, and the Panel considerations and recommendations regarding the proposed special controls that FDA believes would effectively mitigate the risks to health identified in section V. Absent the special controls identified in this proposed order, general controls

applicable to the devices are insufficient to provide reasonable assurance of the safety and effectiveness of the devices. FDA expects that the reclassification of these devices would enable more manufacturers to develop these assays such that patients would benefit from increased access to safe and effective tests.

FDA is proposing to create three separate classification regulations for HBV assays that will be reclassified from class III to class II. HBV assays are prescription in vitro diagnostic devices, and under this proposed order, if finalized, these devices will be identified as prescription in vitro diagnostic devices. As such, the devices must satisfy prescription labeling requirements for in vitro diagnostic products (see 21 CFR 809.10(a)(4) and (b)(5)(ii)). In this proposed order, if finalized, FDA has identified the special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls, will provide a reasonable assurance of the safety and effectiveness of these assays.

FDA is also proposing to create a new product code for HBV antibody assays (including qualitative and quantitative anti-HBs) that will be assigned upon any finalization of this proposed order. Qualitative HBV antigen assays will continue to be assigned the product code LOM upon any finalization of this proposed order.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For these HBV assays, FDA has determined that premarket notification is necessary to provide a reasonable assurance of the safety and effectiveness of these devices. Therefore, the Agency does not intend to exempt these proposed class II devices from 510(k) requirements. If this proposed order is finalized, persons who intend to market a new HBV assay will no longer need to have a PMA for these devices but can instead submit to FDA a 510(k) and receive clearance prior to marketing the device. A 510(k) typically results in a shorter premarket review timeline compared to a PMA, which ultimately provides more timely access of these types of devices to patients.

V. Public Health Benefits and Risks to Health

FDA is providing a substantive summary of the valid scientific evidence concerning the public health benefits of

the use of HBV assays (see also <https://www.fda.gov/media/171770/download>), and the nature (and if known, the incidence) of the risks of the devices (see further discussion of the special controls being proposed to mitigate these risks in section VII of this proposed order).

HBV infection represents a significant global public health burden. According to the World Health Organization (WHO), in 2019 there were approximately 296 million people chronically infected people worldwide, with 1.5 million new HBV infections each year.³ It is estimated by the Centers for Disease Control and Prevention (CDC) that chronic HBV infection in the United States affects at least between 580,000 to 1.17 million people with HBV infection in the United States; two-thirds of whom may be unaware of their infection.⁴ HBV infection can be asymptomatic, and accordingly, many HBV-infected individuals are unaware of their HBV infection. Approximately 95 percent of adult patients with acute infection, defined as the first 6 months after infection, recover completely, and 5 percent of adults develop chronic HBV.⁵ Infants born to women who are HbsAg-positive are at high risk of HBV infection. In absence of treatment, infants infected with HBV have a 90 percent risk of progression to chronic HBV and up to 25 percent of infants who acquire chronic HBV infection will die prematurely from HBV-related hepatocellular carcinoma or cirrhosis.⁶ Patients who are tested and become aware that they are HBV infected may modify risk behaviors to prevent transmission to others and can be referred for treatment. Patients with chronic HBV infection have a risk of developing liver damage, liver cancer, or liver failure. They can also spread their infection to others. HBV can be reactivated in patients receiving immunosuppressive therapies, resulting in serious risk of liver failure or liver-associated death (Ref. 3). HBV is a vaccine-preventable liver infection.

With the initiation of the WHO Viral Hepatitis Elimination Plan⁷ and the Department of Health and Human Services (HHS) Viral Hepatitis National

³ <https://www.who.int/news-room/fact-sheets/detail/hepatitis-b>. Accessed on July 12, 2024.

⁴ Centers for Disease Control and Prevention—Clinical Overview of Hepatitis B (Available at <https://www.cdc.gov/hepatitis-b/hcp/clinical-overview/index.html>). Accessed on July 12, 2024.

⁵ Ibid.

⁶ Ibid.

⁷ https://www.who.int/health-topics/hepatitis/elimination-of-hepatitis-by-2030#tab=tab_1. Accessed on July 12, 2024.

Strategic Plan for the United States,⁸ it is important for individuals to know their HBV infected status, to link HBV infected individuals to care, and to eliminate virus transmission. Therefore, diagnosis of patients with HBV infection through devices such as HBV antibody and antigen assays is essential to ensure that patients are linked to the appropriate care. Current CDC HBV Screening and Testing Recommendations include testing of the following groups: all adults 18 and older at least once in their lifetime using a triple panel test, pregnant women during pregnancy, people who are at ongoing risk for exposure, and anyone who requests HBV testing.⁹

FDA considered our accumulated experience with the regulation of these HBV assays, input from the Panel meeting, and postmarket information regarding these HBV assays, *i.e.*, information from FDA's publicly available MDR, Manufacturer and User Facility Device Experience (MAUDE), and Medical Device Recall databases.

These HBV assays provide a benefit to the public health by informing individuals of their HBV infected status, linking HBV infected individuals to appropriate care, and aiding in eliminating virus transmission. Once an individual is tested and diagnosed as HBV infected, HBV nucleic acid testing is performed to inform treatment decisions. While HBV infection is treatable, it is not curable, which means that most people who start HBV antiviral treatment must continue it for life. The goal of current treatment is to suppress the virus and reduce the likelihood of long-term complications and transmission (Refs. 3 and 4). Thus, identifying individuals who are HBV infected, linking them to care, and managing their HBV infection to alleviate development of liver damage, liver cancer, liver failure, and potential HBV transmission would not only greatly impact public health but also go a long way towards helping the United States achieve HBV elimination.

Probable risks to health associated with the use of HBV assays include risks related to the risk of false results (false positives, false negatives, inaccurate low assay results, inaccurate high assay results, false reactive results, or false non-reactive results), failure to correctly interpret assay results, and failure to correctly operate the device. For HBV antigen and antibody assays, false

positive results are generally referred to as false reactive results and false negative results are generally referred to as false non-reactive results. False results can lead to uninfected individuals receiving unnecessary further testing and treatment or infected individuals remaining undiagnosed and untreated. Undiagnosed and untreated individuals are likely to experience increases in morbidity and mortality and can spread the infection to others. FDA has identified the following additional specific risks to health associated with each of the HBV assays listed below.

A. Qualitative HBV Antigen Assays

Factors that may cause decreased assay sensitivity and/or an increased rate of false non-reactive results include, but are not limited to, the presence of interfering substances in the sample, acute infection at a stage that is too early for a device to detect the infection, and antigen concentrations that are too low to be detected by the device. Factors that may lead to false reactive results include device contamination from reactive samples, cross-reactivity with other antigens, or misinterpretation of invalid results as reactive.

- *A false reactive assay result for HbeAg.* Incorrectly interpreting the assay results as a reactive assay result or failing to correctly operate the assay causing a false reactive assay result may lead to continued treatment for hepatitis B with antiviral medication when it otherwise would not be indicated. Antiviral medication has risks including toxicity and more rarely allergic reactions. Over time, viral resistance in patients who are co-infected but undiagnosed with other viruses that are treated with the same antiviral medication, such as HIV, can lead to viral resistance.

- *A false reactive assay result for HbsAg.* Incorrectly interpreting the assay results as a reactive assay result or failing to correctly operate the assay causing a false reactive assay result may contribute to unnecessary additional testing, potentially delaying diagnosis of alternative causes of liver disease when present and may impact the psychological well-being of the patient. Factors that may increase the rate of false reactive assay reporting include cross-reactivity with antigens from other microorganisms or other disease conditions.

- *A false non-reactive result for HbeAg.* Incorrectly interpreting the assay results as a non-reactive assay result or failing to correctly operate the assay causing a false non-reactive assay result may lead to missing the

opportunity for treatment of an HBV infected individual with antiviral medication or premature discontinuation of antiviral treatment when continuation of treatment is otherwise indicated should a clinician be falsely led to determine a patient has seroconverted HbeAg to anti-Hbe. Premature discontinuation of antiviral medication could result in adverse effects on patient health, such as cirrhosis, liver cancer, and liver damage, all of which are known to contribute to patient morbidity and mortality, or may contribute to public health risk by leading to virus transmission.

- *A false non-reactive assay result for HbsAg.* Incorrectly interpreting the assay results as a non-reactive assay result or failing to correctly operate the assay causing a false non-reactive assay result may delay or prevent a patient with HBV infection from being identified and linked to care. Missed identification of patients with chronic HBV infection could lead to adverse effects on patient health such as cirrhosis, liver cancer, and liver damage, all of which are known to contribute to patient morbidity and mortality. A false non-reactive HbsAg assay incorrectly interpreted as non-reactive also may contribute to public health risk by leading to virus transmission.

B. HBV Antibody Assays (Including Qualitative and Quantitative Anti-HBs)

Factors that may cause decreased assay sensitivity and/or an increased rate of false non-reactive results include, but are not limited to, the presence of interfering substances in the sample, acute infection at a stage that is too early for a device to detect the infection, and antibody concentrations that are too low to be detected by the device. They also can be caused by misinterpretation of invalid results as non-reactive. Factors that may lead to false reactive results include device contamination from reactive samples, cross-reactivity with other antibodies, or misinterpretation of invalid results as reactive.

- *A false reactive assay result for anti-HBs and anti-HBc.* Incorrectly interpreting the assay results as a reactive assay result or failing to correctly operate the assay causing a false reactive assay result may lead to improper patient management. A false reactive antibody assay result could result in the unnecessary continuation of antiviral treatment. Antiviral medication has risks including toxicity and more rarely allergic reactions. Over time, viral resistance in patients who are co-infected but undiagnosed with other viruses that are treated with the same antiviral medication, such as HIV, can

⁸ <https://www.hhs.gov/sites/default/files/Viral-Hepatitis-National-Strategic-Plan-2021-2025.pdf>. Accessed on July 12, 2024.

⁹ <https://www.cdc.gov/hepatitis/hbv/index.htm>. Accessed on July 12, 2024.

lead to viral resistance. Consequently, repeatedly false reactive results have the potential to lead to inappropriate patient management decisions.

- *A false reactive assay result for anti-HBs.* Incorrectly interpreting the assay results as a reactive assay result or failing to correctly operate the assay causing a false reactive assay result when the device is used as an aid in the determination of susceptibility to HBV infection in individuals prior to or following HBV vaccination or where vaccination status is unknown may cause a patient to be considered previously exposed and therefore immune to HBV or that the patient was successfully vaccinated. A false reactive result may cause the patient to not receive a vaccine, vaccine booster, hyperimmune globulin, and would be at higher risk of infection if exposed to HBV.

- *A false reactive assay result for anti-Hbe.* Incorrectly interpreting the assay results as a reactive assay result, or failing to correctly operate the assay causing a false reactive assay result may lead to missing the opportunity for treatment of HBV infection with antiviral medications in a subset of individuals for whom treatment would otherwise be indicated, or premature discontinuation of antiviral treatment when continuation of treatment is otherwise indicated should a clinician be falsely led to determine a patient has seroconverted HbeAg to anti-Hbe. Premature discontinuation of antiviral medication could result in adverse effects on patient health such as cirrhosis, liver cancer, and liver damage, all of which are known to contribute to patient morbidity and mortality, or may contribute to public health risk by leading to inadvertent transmission of virus by an infected individual.

- *A false non-reactive assay result for anti-HBc.* When the device is used as an aid in the diagnosis of HBV infection in patients with symptoms of hepatitis or who may be at risk for HBV infection, incorrectly interpreting the assay results as non-reactive assay result, or failing to correctly operate the assay causing a false non-reactive assay result may lead to non-diagnosis or a delay in diagnosis of HBV infection with an associated delay in therapy and potentially increased risk of HBV-related morbidity or mortality. Patients with active infection may unknowingly continue to infect others. False non-reactive results can also lead to unnecessary diagnostic evaluation if alternative etiologies of hepatitis are pursued. False non-reactive assay results may occur if the level of antibody in a specimen is below the limit of detection of the assay.

- *A false non-reactive assay result for anti-HBs.* When the device is used as an aid in the determination of susceptibility to HBV infection in individuals prior to or following HBV vaccination or where vaccination status is unknown, incorrectly interpreting the assay results as a non-reactive assay result or failing to correctly operate the assay causing a false non-reactive assay result may lead to unnecessary repeated vaccination for HBV.

- *A false non-reactive assay result for anti-Hbe.* Incorrectly interpreting the assay results as non-reactive assay result or failing to correctly operate the assay causing a false non-reactive assay result may lead to improper patient management, including continued treatment for HBV with antiviral medication. Antiviral medication has risks including toxicity and more rarely allergic reactions. Over time, viral resistance in patients who are co-infected but undiagnosed with other viruses using the same antiviral medication, such as HIV, can lead to viral resistance.

C. Quantitative HBV Nucleic Acid-Based Assays

Decreased assay sensitivity and/or an increased rate of false negative assay reporting may occur with patient samples that contain different genotypes or rare de novo mutations in HBV genomic regions targeted by the device. In these situations, HBV viral load can transiently decrease and/or become undetectable in samples before the virus enters chronic replication.

- *A false positive or falsely elevated quantitative HBV nucleic acid assay result.* Incorrectly interpreting the assay results as a positive assay result or failing to correctly operate the assay causing a false positive assay result may negatively influence patient management decisions. Such decisions may include the administration or continuation of unnecessary antiviral treatment in patients with chronic HBV infection with its known toxicities and more rarely allergic reactions. Certain patients with falsely elevated HBV nucleic acid assay results may not undergo liver biopsy to investigate other causes of liver disease when the biopsy would otherwise be indicated for certain patients.

- *A false negative or falsely decreased quantitative HBV nucleic acid assay result.* Incorrectly interpreting the assay results as a negative assay result, or failing to correctly operate the assay causing a false negative assay result may negatively influence patient management decisions for patients with chronic HBV infection, including the

withholding of treatment, failure to treat, or premature discontinuation of treating HBV infection when antiviral treatment is otherwise indicated or the choice of an inappropriate treatment. This could lead to adverse effects on patient health such as progressive liver disease, cirrhosis and/or hepatocellular carcinoma, and other cancers. Patients with active HBV replication also risk spreading the virus to others. Certain patients with falsely low HBV nucleic acid assay results may undergo liver biopsy to investigate other causes of liver disease.

VI. Summary of Data Upon Which the Reclassification Is Based

The safety and effectiveness of these device types has become well established since the initial approval of the first qualitative HBV antibody assay in 2000, the first HBV antigen assay in 2001, and the first quantitative HBV nucleic acid-based assay in 2008. FDA has considered and analyzed the following information: (1) accumulated experience regulating these HBV assays, (2) input from the Panel meeting, and (3) postmarket information regarding HBV assays, *i.e.*, information from FDA's publicly available MDR, MAUDE, and Medical Device Recall databases. The available evidence demonstrates that there are public health benefits derived from the use of HBV assays indicated for use to aid in diagnosis of HBV infection and/or for use to aid in the management of HBV infected patients, or as an aid in the determination of susceptibility to HBV infection (anti-HBs). In addition, the nature of the associated risks to health are known, and special controls can be established to sufficiently mitigate these risks.

Based on our review of the information described above, FDA has determined that special controls, in addition to general controls, are necessary to provide a reasonable assurance of safety and effectiveness for HBV assays, and that sufficient information exists to establish such special controls. Therefore, FDA, on its own initiative, is proposing to reclassify these postamendments devices from class III (general controls and premarket approval) into class II (general controls and special controls), subject to premarket notification (510(k)) requirements.

VII. Proposed Special Controls

FDA believes that these devices can be classified into class II with the establishment of special controls. FDA believes that the following proposed special controls would mitigate each of

the risks to health described in section V and that these special controls, in addition to general controls, would provide a reasonable assurance of safety and effectiveness for HBV assays. Tables 1 through 3 below demonstrate how FDA believes each risk to health described in section V would be mitigated by the proposed special controls for each device type.

A. Qualitative HBV Antigen Assays

The risk of inaccurate interpretation of assay results can be mitigated by special controls requiring certain labeling, including providing clearly stated warnings and limitations and

information on principles of operation and procedures in performing the assay.

Risks associated with false results (e.g., false non-reactive and false reactive assay results) and with the failure to correctly operate the device can be mitigated through a combination of special controls, including certain labeling requirements, certain design verification and validation information, and performance studies. Examples of verification and validation information to be included in the design of the device include documentation of performance specifications including analytical and clinical performance criteria. In addition, design verification

and validation activities must include documentation of a complete device description, critical reagents, risk analysis strategies, lot release criteria, stability studies, and protocols. Required statements in labeling can aid in mitigating the failure of the device to perform as indicated, for example including a statement that use of the assay with specimen types other than those specifically identified for use with this device may cause inaccurate assay results. Special controls requiring additional labeling to provide a brief summary of the instructions for use can also mitigate these risks.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES FOR QUALITATIVE HBV ANTIGEN ASSAYS

Identified risks to health	Mitigation measures
False reactive/non-reactive assay result	Certain labeling information, including limitations, explanation of procedures, and results interpretation information. Certain design verification and validation information, including certain device description information, risk analysis strategies, lot release criteria, stability studies and protocols, and performance criteria including analytical studies and clinical studies.
Failure to correctly interpret the assay results	Certain labeling information, including warnings, limitations, results interpretation information, and explanation of procedures. Certain design verification and validation information, including certain device description information, critical reagent information, risk analysis strategies, lot release criteria, and stability studies and protocols.
Failure to correctly operate the device	Certain labeling information, including warnings, limitations, results interpretation information, and explanation of procedures. Certain design verification and validation information, including certain device description, critical reagent information, risk analysis strategies, lot release criteria, and stability studies and protocols.

B. HBV Antibody Assays (Including Qualitative and Quantitative Anti-HBs)

The risk of falsely reactive, non-reactive, elevated, or lowered assay results can be mitigated by special controls requiring certain labeling, including providing clearly stated warnings and limitations and information on principles of operation and procedures in performing the assay.

Risks associated with the failure of the device to perform as indicated (e.g.,

false non-reactive and false reactive assay results) can be mitigated through a combination of special controls, including certain labeling requirements, certain design verification and validation information, and performance studies. Examples of verification and validation information to be included in the design of the device include documentation of performance specifications including analytical and clinical performance criteria. In addition, design verification

and validation activities must include documentation of a complete device description, critical reagents, risk analysis strategies, lot release criteria, stability studies, and protocols. Required statements in labeling can aid in mitigating the failure of the device to perform as indicated; for example, including a statement that use of the assay with specimen types other than those specifically identified for use with this device may cause inaccurate assay results.

TABLE 2—RISKS TO HEALTH AND MITIGATION MEASURES FOR HBV ANTIBODY ASSAYS (INCLUDING QUALITATIVE AND QUANTITATIVE ANTI-HBS)

Identified risks to health	Mitigation measures
False reactive/false non-reactive assay result. In addition, for quantitative assays: Falsely elevated/falsely lowered assay result.	Certain labeling information, including limitations, explanation of procedures, and results interpretation information. Certain design verification and validation information including certain device description information, risk analysis strategies, lot release criteria, stability studies and protocols, and performance criteria including analytical studies and clinical studies.
Failure to correctly interpret the assay results	Certain labeling information, including warnings, limitations, results interpretation information, and explanation of procedures. Certain design verification and validation information including certain device description, critical reagent information, risk analysis strategies, lot release criteria, and stability studies and protocols.

TABLE 2—RISKS TO HEALTH AND MITIGATION MEASURES FOR HBV ANTIBODY ASSAYS (INCLUDING QUALITATIVE AND QUANTITATIVE ANTI-HBS)—Continued

Identified risks to health	Mitigation measures
Failure to correctly operate the devices	Certain labeling information, warnings, limitations, results interpretation information, and explanation of procedures. Certain design verification and validation information including certain device description, critical reagent information, risk analysis strategies, lot release criteria, and stability studies and protocols.

C. Quantitative HBV Nucleic Acid-Based Assays

The risk of falsely positive, negative, elevated, or lowered assay results can be mitigated by special controls requiring certain labeling, including providing clearly stated warnings and limitations, device description information, and detailed instructions in the device labeling regarding the interpretation of assay results and principles of operation and procedures in performing the assay. Risks associated with the failure of the device to perform as indicated (e.g.,

inaccurately low or high results, false negative results, and false positive assay results) can be mitigated through a combination of special controls related to certain labeling requirements, design verification and validation activities, and performance studies. Examples of verification and validation information to be included in the design of the device include documentation of a complete device description, calibrators, critical reagents, traceability, and lot release criteria. In addition, design verification and validation must include

documentation of performance specifications, including analytical and clinical performance criteria. Required statements in labeling can aid in mitigating the occurrence of inaccurate results. The risks of false positive/false negative/falsely elevated/falsely lowered results due to decreased assay sensitivity can be mitigated by special controls related to certain labeling, design verification and validation activities, risk analysis strategies, and performance studies.

TABLE 3—RISKS TO HEALTH AND MITIGATION MEASURES FOR QUANTITATIVE HBV NUCLEIC ACID-BASED ASSAYS

Identified risks to health	Mitigation measures
False positive/false negative/falsely elevated/falsely lowered result.	Certain labeling information, including limitations, explanation of procedures, and results interpretation information. Certain design verification and validation information, including certain device description information, risk analysis strategies, lot release criteria, stability studies and protocols, and performance criteria including analytical studies and clinical studies.
Failure to correctly interpret the assay results	Certain labeling information, including warnings, limitations, results interpretation information, and explanation of procedures. Certain design verification and validation information, including certain device description, critical reagent information, risk analysis strategies, lot release criteria, and stability studies and protocols.
Failure to correctly operate the device	Certain labeling warnings, limitations, results interpretation information, and explanation of procedures. Certain design verification and validation information including certain device description, critical reagent information, risk analysis strategies, lot release criteria, and stability studies and protocols.

If this proposed order is finalized, qualitative HBV antigen assays, HBV antibody assays (including qualitative and quantitative anti-HBs), and quantitative HBV nucleic acid-based assays will be reclassified into class II (general controls and special controls) and would be subject to premarket notification requirements under section 510(k) of the FD&C Act. Firms submitting a 510(k) of the FD&C Act for such devices will be required to comply with the particular mitigation measures set forth in the special controls. FDA believes that adherence to the special controls, in addition to the general controls, is necessary to provide a reasonable assurance of safety and effectiveness of HBV assays.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

While this proposed order contains no new collections of information, it does refer to previously approved FDA collections of information. The previously approved FDA collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in

21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR parts 801 and 809 have been approved under OMB control number 0910–0485.

X. Proposed Effective Date

FDA proposes that any final order based on this proposed order become effective 30 days after the date of its publication in the **Federal Register**.

XI. Codification of Orders

Under section 513(f)(3) of the FD&C Act, FDA may issue final orders to reclassify devices. FDA will continue to codify classifications and

reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as newly codified orders. Therefore, under section 513(f)(3) of the FD&C Act, in the proposed order, we are proposing to codify qualitative hepatitis B virus antigen assays in the new § 866.3178, hepatitis B virus antibody assays (including qualitative and quantitative anti-HBs) in the new § 866.3179, and quantitative hepatitis B virus nucleic acid-based assays in the new § 866.3180, under which these HBV assays would be reclassified from class III into class II.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

- *1. Summary Minutes Prepared for the September 7, 2023, Meeting of the Microbiology Devices Panel (available at <https://www.fda.gov/media/173610/download>).
- *2. Meeting Transcript Prepared for the September 7, 2023, Meeting of the Microbiology Devices Panel (available at <https://www.fda.gov/media/173609/download>).
3. Terrault, N.A., A.S.F. Lok, B.J. McMahon, et al., "Update on Prevention, Diagnosis, and Treatment of Chronic Hepatitis B: AASLD 2018 Hepatitis B Guidance." *Hepatology*, 67(4): 1560–1599, 2018.
4. CDC, "Clinical Testing and Diagnosis for Hepatitis B," <https://www.cdc.gov/hepatitis-b/hcp/diagnosis-testing/index.html>. Accessed July 11, 2024.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 866 be amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.3178 to subpart D to read as follows:

§ 866.3178 Qualitative hepatitis B virus antigen assays.

(a) *Identification.* A qualitative hepatitis B virus (HBV) antigen assay is identified as an in vitro diagnostic device intended for prescription use for qualitative use with human serum, plasma, or other matrices that aids in the diagnosis of chronic or acute HBV infection. HBV surface antigen (HbsAg) is also used for screening of HBV infection in pregnant women to identify neonates who are at risk of acquiring hepatitis B during perinatal period. The assay is not intended for screening of blood, plasma, cells, or tissue donors.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The labeling required under § 809.10(b) of this chapter must include:

(i) A prominent statement that the assay is not intended for the screening of blood, plasma, cells, or tissue donors.

(ii) A detailed explanation of the principles of operation and procedures for performing the assay.

(iii) A detailed explanation of the interpretation of results.

(iv) Limitations, which must be updated to reflect current clinical practice and disease presentation and management. The limitations must include statements that indicate:

(A) The specimen types for which the device has been cleared, and that use of this assay with specimen types other than those specifically cleared for this device may result in inaccurate assay results.

(B) When appropriate, performance characteristics of the assay have not been established in populations of immunocompromised or immunosuppressed patients or other populations where assay performance may be affected.

(C) Diagnosis of hepatitis B infection should not be established on the basis of a single assay result but should be determined by a licensed healthcare professional in conjunction with the clinical presentation, history, and other diagnostic procedures.

(D) Detection of HBV antigens indicates a current infection with hepatitis B virus but does not differentiate between acute or chronic

infection. False reactive HbsAg result may occur for up to 2 weeks after vaccination with HbsAg containing vaccine.

(E) Current methods for the detection of hepatitis B antigens may not detect all potentially infected individuals. A non-reactive assay result does not exclude the possibility of exposure to or infection with hepatitis B virus. A non-reactive assay result in individuals with prior exposure to hepatitis B may be due to but not limited to antigen levels below the detection limit of this assay or lack of antigen reactivity to the antibodies in this assay. HBV mutants lacking the ability to produce antigens have been reported. These may occur as "escape" mutants in the presence of anti-HBV antibodies and such patients may be infectious.

(F) Results obtained with this assay may not be used interchangeably with results obtained with a different manufacturer's assay.

(2) Design verification and validation must include the following:

(i) A detailed device description, including all parts that make up the device, ancillary reagents required but not provided, an explanation of the device methodology, design of the capture antibody(ies), external controls, and computational path from collected raw data to reported result (e.g., how collected raw signals are converted into a reported signal and result), as applicable to the detection method and device design.

(ii) For devices with assay calibrators, the design and composition of all primary, secondary, and subsequent quantitation standards used for calibration as well as their traceability to a standardized reference material that FDA has determined is appropriate (e.g., a recognized consensus standard). In addition, analytical testing must be performed following the release of a new lot of the standard material that was used for device clearance or approval, or when there is a transition to a new calibration standard.

(iii) Documentation and characterization (e.g., supplier, determination of identity, purity, and stability) of all critical reagents (including description of the capture antibody(ies)), and protocols for maintaining product integrity throughout its labeled shelf life.

(iv) Risk analysis and management strategies, such as Failure Modes Effects Analysis and/or Hazard Analysis and Critical Control Points summaries and their impact on assay performance.

(v) Final release criteria to be used for manufactured assay lots with appropriate evidence that lots released

at the extremes of the specifications will meet the identified analytical and clinical performance characteristics as well as stability.

(vi) Stability studies for reagents must include documentation of an assessment of real-time stability for multiple reagent lots using the indicated specimen types and must use acceptance criteria that ensure that analytical and clinical performance characteristics are met when stability is assigned based on the extremes of the acceptance range.

(vii) All stability protocols, including acceptance criteria.

(viii) Final release assay results for each lot used in clinical studies.

(ix) Reproducibility study data that includes the testing of three independent production lots.

(x) Detailed documentation of analytical performance studies conducted, as appropriate to the technology, specimen types tested, and intended use of the device, including, the limit of blank (LoB), limit of detection (LoD), cutoff, precision (reproducibility) including lot-to-lot and/or instrument-to-instrument precision, interference, cross reactivity, carryover, hook effect, seroconversion panel testing, matrix equivalency, prominent mutants/variants detection (e.g., for HbsAg), specimen stability, reagent stability, and cross-genotype antigen detection sensitivity, when appropriate.

(xi) Analytical sensitivity of the assay is the same or better than that of other cleared or approved assays.

(xii) For devices with associated software or instrumentation, documentation must include a detailed description of device software, including software applications and hardware-based devices that incorporate software. The detailed description must include documentation of verification, validation, and hazard analysis and risk assessment activities, including an assessment of the impact of threats and vulnerabilities on device functionality and end users/patients as part of cybersecurity review.

(xiii) Detailed documentation and results from a clinical study. Performance must be analyzed relative to an FDA cleared or approved HBV antigen assay or a comparator that FDA has determined is appropriate. This study must be conducted using appropriate patient samples, with an appropriate number of HBV reactive and non-reactive samples in applicable risk and disease categories, and any applicable confirmatory testing. Additional relevant patient groups must be validated as appropriate. The samples must include prospective

(sequential) samples for each identified specimen type and, as appropriate, additional characterized clinical samples. Samples must be sourced from geographically diverse areas. This study must be conducted in the appropriate settings by the intended users to demonstrate clinical performance.

■ 3. Add § 866.3179 to subpart D to read as follows:

§ 866.3179 Hepatitis B virus antibody assays (including qualitative and quantitative anti-HBs).

(a) *Identification.* A hepatitis B virus (HBV) antibody assay is identified as an in vitro diagnostic device intended for prescription use in the detection of antibodies to HBV in human serum, plasma, or other matrices, and as a device that aids in the diagnosis of HBV infection in persons with signs and symptoms of hepatitis and in persons at risk for hepatitis B infection. In addition, results from an anti-HBc IgM (IgM antibodies to core antigen) assay indicating the presence of anti-HBc IgM are indicative of recent HBV infection. Anti-HBs (antibodies to surface antigen) assay results may be used as an aid in the determination of susceptibility to HBV infection in individuals prior to or following HBV vaccination or when vaccination status is unknown. The assay is not intended for screening of blood, plasma, cells, or tissue donors. The assay is intended as an aid in diagnosis in conjunction with clinical findings and other diagnostic procedures.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The labeling required under § 809.10(b) of this chapter must include:

(i) A prominent statement that the assay is not intended for the screening of blood, plasma, cells, or tissue donors.

(ii) A detailed explanation of the principles of operation and procedures for performing the assay.

(iii) A detailed explanation of the interpretation of results.

(iv) Limitations, which must be updated to reflect current clinical practice and disease presentation and management. The limitations must include statements that indicate:

(A) When appropriate, performance characteristics of the assay have not been established in populations of immunocompromised or immunosuppressed patients or other special populations where assay performance may be affected.

(B) Detection of HBV antibodies to a single viral antigen indicates a present or past infection with hepatitis B virus,

but does not differentiate between acute, chronic, or resolved infection.

(C) The specimen types for which the device has been cleared, and that use of the assay with specimen types other than those specifically cleared for this device may result in inaccurate assay results.

(D) Diagnosis of hepatitis B infection should not be established on the basis of a single assay result but should be determined by a licensed healthcare professional in conjunction with the clinical presentation, history, and other diagnostic procedures.

(E) A non-reactive assay result may occur early during acute infection, prior to development of a host antibody response to infection, or when analyte levels are below the limit of detection of the assay.

(F) Results obtained with this assay may not be used interchangeably with results obtained with a different manufacturer's assay.

(v) For devices intended for the quantitative detection of HBV antibodies (anti-HBs), in addition to the special controls listed in paragraphs (b)(1) and (2) of this section, labeling required under § 809.10(b) of this chapter must include:

(A) The assay calibrators' traceability to a standardized reference material that FDA has determined is appropriate (e.g., a recognized consensus standard) and the limit of blank (LoB), limit of detection (LoD), limit of quantitation (LoQ), linearity, and precision to define the analytical measuring interval.

(B) Performance results of the analytical sensitivity study testing a standardized reference material that FDA has determined is appropriate (e.g., a recognized consensus standard).

(2) Design verification and validation must include the following:

(i) Detailed device description, including all parts that make up the device, ancillary reagents required but not provided, an explanation of the device methodology, and design of the antigen(s) and capture antibody(ies) sequences, rationale for the selected epitope(s), degree of amino acid sequence conservation of the target, and the design and composition of all primary, secondary and subsequent standards used for calibration.

(ii) Documentation and characterization (e.g., supplier, determination of identity, and stability) of all critical reagents (including description of the antigen(s) and capture antibody(ies)), and protocols for maintaining product integrity throughout its labeled shelf life.

(iii) Risk analysis and management strategies, such as Failure Modes Effects

Analysis and/or Hazard Analysis and Critical Control Points summaries and their impact on assay performance.

(iv) Final release criteria to be used for manufactured assay lots with appropriate evidence that lots released at the extremes of the specifications will meet the identified analytical and clinical performance characteristics as well as stability.

(v) Stability studies for reagents must include documentation of an assessment of real-time stability for multiple reagent lots using the indicated specimen types and must use acceptance criteria that ensure that analytical and clinical performance characteristics are met when stability is assigned based on the extremes of the acceptance range.

(vi) All stability protocols, including acceptance criteria.

(vii) When applicable, analytical sensitivity of the assay is the same or better than that of other cleared or approved assays.

(viii) Analytical performance studies and results for determining the limit of blank (LoB), limit of detection (LoD), cutoff, precision (reproducibility), including lot-to-lot and/or instrument-to-instrument precision, interference, cross reactivity, carryover, hook effect, seroconversion panel testing, matrix equivalency, specimen stability, reagent stability, and cross-genotype antibody detection sensitivity, when appropriate.

(ix) For devices intended for the detection of antibodies for which a standardized reference material (that FDA has determined is appropriate) is available, the analytical sensitivity study and results testing the standardized reference material. Detailed documentation of that study and its results must be provided, including the study protocol, study report, testing results, and all statistical analyses.

(x) For devices with associated software or instrumentation, documentation must include a detailed description of device software, including software applications and hardware-based devices that incorporate software. The detailed description must include documentation of verification, validation, and hazard analysis and risk assessment activities, including an assessment of the impact of threats and vulnerabilities on device functionality and end users/patients as part of cybersecurity review.

(xi) Detailed documentation of clinical performance testing from a clinical study with an appropriate number of HBV reactive and non-reactive samples in applicable risk categories and conducted in the appropriate settings by the intended

users. Performance must be analyzed relative to an FDA cleared or approved HBV antibody assay or a comparator that FDA has determined is appropriate. Additional relevant patient groups must be validated as appropriate. The samples must include prospective (sequential) samples for each identified specimen type and, as appropriate, additional characterized clinical samples. Samples must be sourced from geographically diverse areas.

(3) For any HBV antibody assay intended for quantitative detection of anti-HBV antibodies, the following special controls, in addition to those special controls listed in paragraphs (b)(1) and (2) of this section, also apply:

(i) Detailed documentation of the metrological calibration traceability hierarchy to a standardized reference material that FDA has determined is appropriate.

(ii) Detailed documentation of the following analytical performance studies conducted, as appropriate to the technology, specimen types tested, and intended use of the device, including upper and lower limits of quantitation (UloQ and LloQ, respectively), linearity using clinical samples, and an accuracy study using the recognized international standard material.

4. Add § 866.3180 to subpart D to read as follows:

§ 866.3180 Hepatitis B virus nucleic acid-based assays.

(a) *Identification.* A nucleic acid-based hepatitis B virus (HBV) assay is identified as an in vitro diagnostic device intended for prescription use in the detection of HBV nucleic acid in specimens from individuals with antibody evidence of HBV infection. In these devices, the detection of HBV nucleic acid is used as an aid in the management of HBV-infected individuals. The assay is intended for use with human serum or plasma (and other matrices as applicable) from individuals with HBV. The assay is not intended for use as a donor screening assay for the presence of HBV nucleic acids in blood, blood products, plasma, cells, or tissue donors, or as a diagnostic assay to confirm the presence of HBV infection.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Labeling required under § 809.10(b) of this chapter must include:

(i) A prominent statement that the assay is not intended for use as a screening assay for the presence of HBV DNA in blood or blood products, plasma, cells, or tissue donors, or as a

diagnostic assay to confirm the presence of HBV infection.

(ii) A detailed explanation of the principles of operation and procedures for performing the assay.

(iii) A detailed explanation of the interpretation of results.

(iv) Limitations, which must be updated to reflect current clinical practice and disease presentation and/or management. These limitations must include statements that indicate:

(A) Management of patients undergoing hepatitis B virus treatment should not be established on the basis of a single assay result but should be determined by a licensed healthcare professional in conjunction with the clinical presentation, history, and other diagnostic procedures, *e.g.*, HBV serologic testing, liver function assays, liver elastography, etc.

(B) The specimen types for which the device has been cleared, and that use of this assay with specimen types other than those specifically cleared for this device may result in inaccurate assay results.

(C) The results obtained with this assay may not be used interchangeably with results obtained with a different manufacturer's assay.

(2) Design verification and validation must include the following:

(i) Detailed device description, including the device components, ancillary reagents required but not provided, and an explanation of the device methodology. Additional information appropriate to the technology must be included such as design of primers and probes, rationale for the selected gene targets, specifications for amplicon size, and degree of nucleic acid sequence conservation.

(ii) For devices with assay calibrators, the design and composition of all primary, secondary, and subsequent quantitation standards used for calibration as well as their traceability to a standardized reference material that FDA has determined is appropriate (*e.g.*, a recognized consensus standard). In addition, analytical testing must be performed following the release of a new lot of the standard material that was used for device clearance or approval, or when there is a transition to a new calibration standard.

(iii) Documentation and characterization (*e.g.*, determination of the identity, supplier, purity, and stability) of all critical reagents (including nucleic acid sequences for primers and probes) and protocols for maintaining product integrity.

(iv) Risk analysis and management strategies demonstrating how risk

control measures are implemented to address device system hazards, such as Failure Modes Effects Analysis and/or Hazard Analysis and Critical Control Points summaries and their impact on assay performance.

(v) Final release criteria to be used for manufactured assay lots with appropriate evidence that lots released at the extremes of the specification will meet the identified analytical and clinical performance characteristics as well as stability.

(vi) Stability studies for reagents must include documentation of an assessment of real-time stability for multiple reagent lots using the indicated specimen types and must use acceptance criteria that ensure that analytical and clinical performance characteristics are met when stability is assigned based on the extremes of the acceptance range.

(vii) All stability protocols, including acceptance criteria.

(viii) Detailed documentation of analytical performance studies conducted as appropriate to the technology, specimen types tested, and intended use of the device, including limit of detection (LoD), linearity, precision, endogenous and exogenous interferences, cross-reactivity, carryover, matrix equivalency, sample and reagents stability, and as applicable, upper and lower limits of quantitation (ULoQ and LLoQ, respectively). Samples selected for use must be from subjects with clinically relevant circulating genotypes in the United States. Cross-reactivity studies must include samples from HBV nucleic acid negative subjects with other viral or non-viral causes of liver disease, including autoimmune hepatitis, alcoholic liver disease, chronic hepatitis C virus (HCV), primary biliary cirrhosis, and nonalcoholic steatohepatitis, when applicable. The effect of each identified nucleic-acid isolation and purification procedure on detection must be evaluated.

(ix) For devices with associated software or instrumentation, documentation must include a detailed description of device software, including software applications and hardware-based devices that incorporate software. The detailed description must include documentation of verification,

validation, and hazard analysis and risk assessment activities, including an assessment of the impact of threats and vulnerabilities on device functionality and end users/patients as part of cybersecurity review.

(x) Detailed documentation of performance from a clinical study with a design and number of clinical samples (appropriately statistically powered) that is appropriate for the intended use of the device as well as conducted in the appropriate settings by the intended users. The samples must include prospective (sequential) samples for each claimed specimen type and, as appropriate, additional characterized clinical samples. Samples must be sourced from geographically diverse areas.

Dated: September 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21932 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF STATE

22 CFR Parts 120 and 121

[Public Notice: 12552; DOS–2024–0023]

RIN 1400–AF29

International Traffic in Arms Regulations: Revisions to Definition and Controls Related to Defense Services; Extension of Comment Period

AGENCY: Department of State.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of State is extending the comment period for a proposed rule published July 29, 2024. The original comment period required submission of comments on or before September 27, 2024. In response to requests from the public, the Department extends the comment period through October 15, 2024.

DATES: The comment period for the proposed rule published July 29, 2024, at 89 FR 60980, is extended. Comments should be received on or before October 15, 2024.

ADDRESSES: Interested parties may submit comments by one of the following methods:

- **Email:** DDTCPublicComments@state.gov with the subject line: “Regulatory Change: Defense Service Definition”.

- **Internet:** At www.regulations.gov, search for this notice, by docket number DOS–2024–0023. Additional instructions regarding submission of comments can be found in the document published at 89 FR 60980, July 29, 2024.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–1282; email DDTCCustomerService@state.gov. ATTN: Revisions to Definition and Controls Related to Defense Services.

SUPPLEMENTARY INFORMATION: On July 29, 2024, the Department of State published a proposed rule proposing revisions to the definition of defense service at 22 CFR 120.32 of the International Traffic in Arms Regulations (22 CFR parts 120 through 130) and to the United States Munitions List at 22 CFR 121.1 (89 FR 60980). On the same day, the Department of Commerce published a complementary proposed rule proposing changes to existing restrictions under the Export Administration Regulations (15 CFR parts 730 through 744) on military and intelligence end uses and end users and related controls on certain activities of U.S. persons, as well as the proposed addition of a military-support end-user control (89 FR 60985). In response to requests from the public received by the Department of Commerce, and due to their plan to extend the comment period for their complementary proposed rule for 15 more days, as published via separate notice, the Department of State is similarly extending the comment period for its proposed rule for 15 days.

Stanley L. Brown,

Acting Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2024–22041 Filed 9–23–24; 4:15 pm]

BILLING CODE 4710–25–P

Notices

Federal Register

Vol. 89, No. 186

Wednesday, September 25, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

USAID Injury/Illness Collection Form per the USAID Occupational Safety & Health (OHS) Program

AGENCY: Agency for International Development (USAID).

ACTION: Notice of information collection.

SUMMARY: In accordance with the Information Collection Review procedures of the Paperwork Reduction Act of 1995 (PRA), the United States Agency for International Development (USAID), is announcing that it has submitted a request to the Office of Management and Budget (OMB) for approval to collect information via Google Forms as per the USAID Occupational Safety & Health (OHS) program. This collection is mandated by the Occupational Safety and Health Administration under the OSH act of 1970 and Federal regulations.

DATES: If this request for approval is granted, USAID plans to collect performance data beginning on or about June 30, 2024 and expected to end June 30, 2029.

ADDRESSES: Comments may be submitted by any of the following methods:

Email: jscherer@usaid.gov

Mail: U.S. Agency for International Development, OSH, Room 5.9C RRB, 300 Pennsylvania Avenue, Washington DC 20523.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to John Scherer, jscherer@usaid.gov, +1 (202) 712 1256.

SUPPLEMENTARY INFORMATION: The OSH Act of 1970 requires the Secretary of Labor to produce regulations that require employers to keep records of occupational deaths, injuries, and illnesses. Executive Order 12196 requires Federal establishments to, "Operate an occupational safety and

health management information system, which shall include the maintenance of such records as the Secretary may require."

The records are used for several purposes. Employers and employees use the records to implement safety and health programs at individual workplaces. Analysis of the data is a widely recognized method for discovering workplace safety and health problems and tracking progress in solving those problems. OSHA uses the injury and illness statistics to help direct its programs and measure its own performance. Also, individuals conducting safety and health evaluations and inspections use the data to help direct their efforts to the hazards that are hurting workers.

The rule, 29 CFR 1960.66, contains a "note" making it clear that recording or reporting a work-related injury, illness, or fatality does not constitute an admission that the Federal agency or an individual was at fault or otherwise responsible for purposes of liability. Such recording or reporting does not constitute an admission of the existence of an employer-employee relationship between the individual recording the injury and the injured individual. Recording or reporting any such injury, illness, or fatality does not mean that an OSHA rule has been violated or that the individual in question is eligible for workers' compensation or any other benefits.

Anthony Bennett,

Chief, Headquarters Management Division,
Office of Management Services (M/MS),
Bureau for Management, U.S. Agency for
International Development.

[FR Doc. 2024-21938 Filed 9-24-24; 8:45 am]

BILLING CODE 6116-01-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

[Docket No.: RHS-24-NONE-0030]

60-Day Notice of Proposed Information Collection: Civil Rights Compliance Requirements; OMB Control No.: 0575-0018

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS) intention to request an extension for a currently approved information collection in support of compliance with Civil Rights laws.

DATES: Comments on this notice must be received by November 25, 2024 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal, <http://www.regulations.gov>. In the "Search for dockets and documents on agency actions" box, enter the docket number "RHS-24-NONE-0030," and click the "Search" button. From the search results: click on or locate the document title: "60-Day Notice of Proposed Information Collection: Civil Rights Compliance Requirements; OMB Control No.: 0575-0018" and select the "Comment" button. Before inputting comments, commenters may review the "Commenter's Checklist" (optional). To submit a comment: Insert comments under the "Comment" title, click "Browse" to attach files (if available), input email address, select box to opt to receive email confirmation of submission and tracking (optional), select the box "I'm not a robot," and then select "Submit Comment."

3. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "FAQ" link.

All comments will be available for public inspection online at the Federal eRulemaking Portal (<https://www.regulations.gov>).

FOR FURTHER INFORMATION CONTACT:

Darren G. Kaihlanen, Acting Director, Civil Rights Office, USDA/Rural Development, 1400 Independence Ave. SW, Washington, DC 20250, Cell Phone: (405) 446-2619 (voice/text).

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Number: 0575–0018.

Expiration Date of Approval: January 31, 2025.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collection under OMB Number 0575–0018 enables the RHS, RBS, and RUS, to effectively monitor a recipient's compliance with the civil rights laws, and to determine whether service and benefits are being provided to beneficiaries on an equal opportunity basis.

The RBS, RHS, and RUS are required to provide Federal financial assistance through its housing and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR part 1901, subpart E, require the recipients of RBS, RHS, and RUS Federal financial assistance to collect various types of information, including information on participants in certain of these agencies' programs, by race, color, and national origin.

The information collected and maintained by the recipients of certain programs from RBS, RHS, and RUS is used internally by these agencies for monitoring compliance with the civil rights laws and regulations. This information is made available to USDA officials, officials of other Federal agencies, and to Congress for reporting purposes. Without the required information, RBS, RHS, RUS and its recipients will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner, and in full compliance with the civil rights laws. In addition, the RBS, RHS, RUS and their recipients would be vulnerable in lawsuits alleging discrimination in the affected programs of these agencies and would be without appropriate data and documentation to defend themselves by demonstrating that services and benefits are being provided to beneficiaries on an equal opportunity basis.

Estimate of Burden: Public reporting burden for this collection of information

is estimated to average 7.5 hours per response.

Respondents: Recipients of RBS, RHS, and RUS Federal financial assistance, loan, and loan guarantee programs.

Estimated Number of Respondents: 27,000.

Estimated Number of Responses per Respondent: 2.72.

Estimated Number of Responses: 73,559.

Estimated Total Annual Burden on Respondents: 550,276.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at (202) 202–260–8621. Email: Crystal.Pemberton@usda.gov.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Development, including whether the information will have practical utility;

(b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, utility and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Copies of this information collection can be obtained from Crystal Pemberton, Rural Development Innovation Center—Regulations Management Division, at (202) 260–8621. Email: Crystal.Pemberton@usda.gov.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Darren Kaihlanen,

Acting Civil Rights Director, Rural Development.

[FR Doc. 2024–21922 Filed 9–24–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Azur Air, Sharypovo Airport, 404/1 Kozhevnikovskiy Land, Moscow, Russia; Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on September 23, 2023. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because Azur Air (“Azur”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On April 7, 2022, I signed an order denying Azur export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.² The temporary denial order was subsequently renewed on October 3, 2022,³ March 29, 2023,⁴ and September

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. sec. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21614).

³ The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60983).

⁴ The March 29, 2023 renewal order was published in the **Federal Register** on April 4, 2023 (88 FR 19908).

23, 2023⁵ in accordance with section 766.24(d) of the Regulations.⁶

On August 27, 2024, BIS, through OEE, submitted a written request for a fourth renewal of the TDO. The written request was made more than 20 days before the TDO's scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Azur by alternative means in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 CFR 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO's expiration, should set forth the basis for BIS's belief that renewal is necessary, including any

additional or changed circumstances. *Id.* "In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year." ⁷ *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number ("ECCN") 9A991 (section 746.8(a)(1) of the EAR).⁸ BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft ("AVS") (section 740.15 of the EAR).⁹ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the TDO and the renewal orders subsequently issued

in this matter on October 3, 2022, March 29, 2023, and September 23, 2023, as well as other evidence developed during this investigation. This evidence demonstrates that Azur has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Azur engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Nha Trang, Vietnam, Dubai, United Arab Emirates ("UAE"), and Antalya, Turkey, without the required BIS authorization.¹⁰ Further evidence indicated that Azur also operated aircraft subject to the EAR on domestic flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial TDO issued, Azur continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.¹¹ The October 3, 2022 renewal order detailed flights into and out of Russia from/to Antalya, Turkey, Dalaman, Turkey, and Bodrum, Turkey.¹² The March 29, 2023 order detailed flights into and out of Russia from/to Sharm el-Sheikh, Egypt, Goa, India, Male, Maldives, Rayong, Thailand, and Adana, Turkey.¹³ Similarly, the September 23, 2023 order detailed flights into and out of Russia from/to Hurghada, Egypt, Sharm el-Sheikh,

¹⁰ Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 27612 flew from Nha Trang, Vietnam to Moscow, Russia and on March 10, 2022, SN 27909 flew from Dubai, UAE to Vladivostok, Russia. In addition, on March 17, 2022, SN 21614 flew from Antalya, Turkey to Kazan, Russia.

¹¹ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹² Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Moscow, Russia on September 21, 2022. In addition, on September 20, 2022, SN 26271 flew from Bodrum, Turkey to Moscow, Russia and SN 30045 flew from Dalaman, Turkey to Yekaterinburg, Russia.

¹³ Publicly available flight tracking information shows that SN 29377 flew from Adana, Turkey to Moscow, Russia on March 13, 2023 and from Sharm el-Sheikh, Egypt to Moscow, Russia on March 14, 2023. In addition, SN 30045 flew from Goa, India to Perm, Russia on March 3, 2023 and from Rayong, Thailand to Kemerovo, Russia on March 6, 2023. On February 18, 2023, SN 24947 flew from Male, Maldives to Moscow, Russia.

⁵ The September 23, 2023 renewal order was published in the **Federal Register** on September 28, 2023 (88 FR 66805).

⁶ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods if it believes that renewal is necessary in the public interest to prevent an imminent violation. In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.

⁷ 88 FR 59791 (Aug. 30, 2023).

⁸ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022 which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁹ 87 FR 13048 (Mar. 8, 2022).

Egypt, Phuket, Thailand, Antalya Turkey, and Dalaman, Turkey.¹⁴

Since that time, Azur has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its August 27, 2024 request for renewal of the TDO, BIS submitted evidence that Azur continues to operate aircraft

subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the September 23, 2023 renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Azur continues to

operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Hurghada, Egypt, Antalya, Turkey, and Dalaman, Turkey. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73071	29377	757-2Q8 (B752)	Antalya, TR/Sochi, RU	September 13, 2024.
RA-73071	29377	757-2Q8 (B752)	Hurghada, EG/Samara, RU	September 5, 2024.
RA-73071	29377	757-2Q8 (B752)	Antalya, TR/Perm, RU	August 14, 2024.
RA-73071	29377	757-2Q8 (B752)	Perm, RU/Antalya, TR	August 12, 2024.
RA-73071	29377	757-2Q8 (B752)	Hurghada, EG/Perm, RU	August 2, 2024.
RA-73075	26271	757-2Q8 (B752)	Perm, RU/Hurghada, EG	September 13, 2024.
RA-73075	26271	757-2Q8 (B752)	Antalya, TR/Moscow, RU	September 10, 2024.
RA-73075	26271	757-2Q8 (B752)	Antalya, TR/Sochi, RU	August 14, 2024.
RA-73075	26271	757-2Q8 (B752)	Surgut, RU/Antalya, TR	August 9, 2024.
RA-73075	26271	757-2Q8 (B752)	Hurghada, EG/Samara, RU	July 14, 2024.
RA-73077	30045	757-2Q8 (B752)	Antalya, TR/Moscow RU	September 11, 2024.
RA-73077	30045	757-2Q8 (B752)	Sharm el-Sheikh, EG/Ufa, RU	September 7, 2024.
RA-73077	30045	757-2Q8 (B752)	Antalya, TR/Astrakhan, RU	August 31, 2024.
RA-73077	30045	757-2Q8 (B752)	Perm, RU/Hurghada, EG	August 12, 2024.
RA-73077	30045	757-2Q8 (B752)	Novosibirsk, RU/Moscow, RU	July 2, 2024.
RA-73079	24947	767-3Y0 (ER) (B763)	Moscow, RU/Antalya, TR	September 13, 2024.
RA-73079	24947	767-3Y0 (ER) (B763)	Dalaman, TR/Yekaterinburg, RU	September 3, 2024.
RA-73079	24947	767-3Y0 (ER) (B763)	Moscow, RU/Antalya, TR	August 14, 2024.
RA-73079	24947	767-3Y0 (ER) (B763)	Sharm el-Sheikh, EG/Kazan, RU	August 13, 2024.
RA-73079	24947	767-3Y0 (ER) (B763)	Dalaman, TR/Kazan, RU	August 11, 2024.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Azur has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Azur has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Azur, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Azur Air, Sharypovo Airport, 404/1 Kozhevnikheskiy Lane, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Azur any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Azur of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Azur acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Azur of any item subject to the EAR that has been

¹⁴ Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Moscow, Russia on September 19, 2023 and from Phuket, Thailand to Vladivostok, Russia on August

15, 2023. In addition, SN 26271 flew from Hurghada, Egypt to Moscow, Russia on August 31, 2023 and Sharm el-Sheikh, Egypt to Perm, Russia on September 20, 2023. On September 12, 2023, SN

24947 flew from Dalaman, Turkey to Yekaterinburg, Russia.

exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Azur in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Azur, or service any item, of whatever origin, that is owned, possessed or controlled by Azur if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Azur by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Azur may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Azur as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Azur, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2024–21949 Filed 9–24–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia; Order Renewing Temporary Denial of Export Privileges

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on April 7, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations and that renewal for an extended period is appropriate because PJSC Aeroflot (“Aeroflot”) has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR.

I. Procedural History

On April 7, 2022, I signed an order denying Aeroflot export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.² The temporary denial order was subsequently renewed on October 3,

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. sec. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21611).

2022,³ March 29, 2023,⁴ and September 23, 2023⁵ in accordance with section 766.24(d) of the Regulations.⁶

On August 27, 2024, BIS, through OEE, submitted a written request for a fourth renewal of the TDO. The written request was made more than 20 days before the TDO’s scheduled expiration and, given the temporary suspension of international mail service to Russia, OEE has attempted to deliver a copy of the renewal request to Aeroflot by alternative means in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

If BIS believes that renewal of a denial order is necessary in the public interest to prevent an imminent violation, it may file a written request for renewal, with

³ The October 3, 2022 renewal order, which was effective upon issuance, was published in the **Federal Register** on October 7, 2022 (87 FR 60985).

⁴ The March 29, 2023 renewal order, which was also effective upon issuance, was published in the **Federal Register** on April 3, 2023 (88 FR 19609).

⁵ The September 23, 2023 renewal order, which was effective upon issuance, was published in the **Federal Register** on September 28, 2023 (88 FR 66807).

⁶ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year.

any modifications if appropriate. 15 CFR 766.24(d)(1). The written request, which must be filed no later than 20 days prior to the TDO's expiration, should set forth the basis for BIS's belief that renewal is necessary, including any additional or changed circumstances. *Id.* "In cases demonstrating a pattern of repeated, ongoing and/or continuous apparent violations, BIS may request the renewal of a temporary denial order for an additional period not exceeding one year." ⁷ *Id.*

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number ("ECCN") 9A991 (section 746.8(a)(1) of the EAR).⁸ BIS will review any export or reexport license applications for such items

under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft ("AVS") (section 740.15 of the EAR).⁹ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request for renewal for a period of one year is based upon the facts underlying the issuance of the TDO and the renewal orders subsequently issued in this matter on October 3, 2022, March 29, 2023, and September 23, 2023, as well as other evidence developed during this investigation. This evidence demonstrates that Aeroflot has continued, and continues, to act in blatant disregard for U.S. export controls and the terms of previously issued TDOs. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Aeroflot engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Beijing, China, Delhi, India, and Dubai, United Arab Emirates, without the required BIS authorization.¹⁰ Further evidence indicated that Aeroflot also operated aircraft subject to the EAR on domestic flights within Russia, potentially in

violation of section 736.2(b)(10) of the Regulations.

As discussed in the prior renewal orders, BIS presented evidence indicating that, after the initial TDO issued, Aeroflot continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and within Russia, in violation of the Regulations and the TDO itself.¹¹ The October 3, 2022 order detailed flights into and out of Russia from/to Minsk, Belarus, Delhi, India, and Istanbul, Turkey, as well as within Russia.¹² The March 29, 2023 order detailed flights into and out of Russia from/to Yerevan, Armenia, Shanghai, China, Bangkok, Thailand, and Urgench, Uzbekistan, as well as within Russia.¹³ Similarly, the September 23, 2023 order detailed flights into and out of Russia from/to Beijing, China, Delhi, India, and Antalya, Turkey.¹⁴

Since that time, Aeroflot continued to engage in conduct prohibited by the TDO and Regulations. In its August 27, 2024 request for TDO renewal, BIS submitted evidence that Aeroflot continues to operate aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the September 23, 2023 renewal order and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that Aeroflot continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Antalya, Turkey, Guangzhou, China, and Bangkok, Thailand as well as domestically within Russia. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73126	41214	737-8LJ (B738)	Nizhny Novgorod, RU/Antalya, TR	September 10, 2024.
RA-73126	41214	737-8LJ (B738)	Moscow, RU/Ufa, RU	September 8, 2024.
RA-73126	41214	737-8LJ (B738)	Moscow, RU/Tashkent, UZ	August 14, 2024.
RA-73126	41214	737-8LJ (B738)	Antalya, TR/Novosibirsk, RU	August 13, 2024.
RA-73126	41214	737-8LJ (B738)	Sharm el-Sheikh, EG/Moscow, RU	August 9, 2024.
RA-73144	41690	777-3M0 (ER) (B77W)	Antalya, TR/Moscow, RU	September 10, 2024.
RA-73144	41690	777-3M0 (ER) (B77W)	Vladivostok, RU/Moscow, RU	September 9, 2024.
RA-73144	41690	777-3M0 (ER) (B77W)	Moscow, Russia/Guangzhou, China	August 10, 2024.
RA-73144	41690	777-3M0 (ER) (B77W)	Istanbul, TR/Moscow, RU	August 6, 2024.

⁷ 88 FR 59791 (Aug. 30, 2023).

⁸ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0-2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁹ 87 FR 13048 (Mar. 8, 2022).

¹⁰ Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 65309 flew from Beijing, China to Moscow, Russia, and SN 41690 flew from Dubai, UAE to Moscow,

Russia. In addition, on March 7, 2022, SN 63511 flew from Delhi, India to Moscow, Russia.

¹¹ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

¹² Publicly available flight tracking information shows that SN 41690 flew from Istanbul, Turkey to Moscow, Russia on September 20, 2022 and from Delhi, India to Moscow, Russia on September 23, 2022. In addition, on September 1, 2022, SN 41214 flew from Minsk, Belarus to Moscow, Russia. On September 13, 2022, SN 41214 flew from Moscow, Russia to Sochi, Russia.

¹³ Publicly available flight tracking information shows that SN 41214 flew from Yerevan, Armenia

to Moscow, Russia on February 16, 2023 and from Urgench, Uzbekistan to Moscow, Russia on March 1, 2023. In addition, on March 2, 2023, SN 41214 flew from Moscow, Russia to Sochi, Russia. On February 4, 2023, SN 41690 flew from Bangkok, Thailand to Moscow, Russia. On March 5, 2023 and March 19, 2023, respectively, SNs 65309 and 41690 flew from Shanghai, China to Moscow, Russia.

¹⁴ Publicly available flight tracking information shows that on August 31, 2023, SN 41690 flew from Beijing, China to Moscow, Russia. On September 19, 2023, SN 65309 flew from Delhi, India to Moscow, Russia. On September 17, 2023, SN 65307 flew from Antalya, Turkey to Moscow, Russia.

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73144	41690	777-3M0 (ER) (B77W)	Phuket, TH/Moscow, RU	July 30, 2024.
RA-73146	65309	777-300 (ER) (B77W)	Antalya, TR/Moscow, RU	September 10, 2024.
RA-73146	65309	777-300 (ER) (B77W)	Yuzhno-Sakhalinsk, RU/Moscow, RU	September 6, 2024.
RA-73146	65309	777-300 (ER) (B77W)	Antalya, TR/Moscow, RU	August 13, 2024.
RA-73146	65309	777-300 (ER) (B77W)	Male, MV/Moscow, RU	August 5, 2024.
RA-73146	65309	777-300 (ER) (B77W)	Bangkok, TH/Moscow, RU	August 4, 2024.
RA-73150	65307	777-3M0 (ER) (B77W)	Antalya, TR/Moscow, RU	September 6, 2024.
RA-73150	65307	777-3M0 (ER) (B77W)	Petropavlovsk-Kamchatsky, RU/Moscow, RU.	September 5, 2024.
RA-73150	65307	777-3M0 (ER) (B77W)	Vladivostok, RU/Moscow, RU	August 13, 2024.
RA-73150	65307	777-3M0 (ER) (B77W)	Istanbul, TR/Moscow, RU	August 11, 2024.
RA-73150	65307	777-3M0 (ER) (B77W)	Antalya, TR/Moscow, RU	August 10, 2024.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Aeroflot has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Moreover, I find that renewal for an extended period is appropriate because Aeroflot has engaged in a pattern of repeated, ongoing and/or continuous apparent violations of the EAR. Therefore, renewal of the TDO for one year is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Aeroflot, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, PJSC Aeroflot, 1 Arbat St., 119019, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding,

transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of Aeroflot any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Aeroflot of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Aeroflot acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Aeroflot of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Aeroflot in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except

directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Aeroflot, or service any item, of whatever origin, that is owned, possessed or controlled by Aeroflot if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Aeroflot by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, Aeroflot may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Aeroflot as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Aeroflot, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for one year.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2024-21948 Filed 9-24-24; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA request for panel review.

SUMMARY: A Request for Panel Review was filed in the matter of Certain Softwood Lumber Products from Canada: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review, and Final Determination of No Shipments; 2022 with the U.S. Section of the USMCA Secretariat on September 18, 2024. The USMCA Secretariat has assigned case number USA-CDA-2024-10.12-04 to this request.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202-482-5438.

SUPPLEMENTARY INFORMATION: The final results of the investigation under review were determined by the United States Department of Commerce and were published in the **Federal Register** on August 19, 2024 (89 FR 67067).

Article 10.12 of chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews)*, which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in

accordance with Rule 40. For the complete Rules, please see https://can-mex-usa-sec.org/secretariat/agreement-acuerdo-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 18, 2024);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 4, 2024);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: September 19, 2024.

Vidya Desai,

United States Secretary, USMCA Secretariat.

[FR Doc. 2024-21912 Filed 9-24-24; 8:45 am]

BILLING CODE 3510-GT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-129, C-489-806]

Notice of Opportunity To Request Administrative Review; Correction and Extension of Certain Deadlines: Certain Walk-Behind Lawn Mowers and Parts Thereof From the People's Republic of China and Certain Pasta From the Republic of Türkiye

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of July 1, 2024, of opportunity to request administrative reviews of orders, findings, or suspended investigations (opportunity notice). This notice inadvertently omitted listing the antidumping duty (AD) order on certain walk-behind lawn mowers and parts thereof (Lawn Mowers) from the

People's Republic of China (China). This notice also inadvertently listed an incorrect period of review (POR) for the countervailing duty (CVD) order on certain pasta (Pasta) from the Republic of Türkiye (Türkiye). Commerce is extending certain deadlines identified in the opportunity notice due to these errors.

FOR FURTHER INFORMATION CONTACT:

Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. Commerce notifies interested parties of the opportunity to request administrative review with the publication a **Federal Register** notice. The opportunity notice published on July 1, 2024, for AD and CVD orders with a July anniversary month, inadvertently did not provide notice of opportunity to request administrative review of the AD order on Lawn Mowers from China for the 7/1/2023 through 6/30/2024 POR.¹ This notice also inadvertently listed an incorrect POR for the CVD order on Pasta from Türkiye.

Correction

In the **Federal Register** of July 1, 2024, in FR Doc. 2024-14404, on page 54438, correct the table by adding the following under the subheading "The People's Republic of China:" "Certain Walk-Behind Lawn Mowers and Parts Thereof, A-570-129; POR 7/1/23-6/30/24,"² and on page 54439, correct the table by changing the POR from 1/1/22-12/31/22, to 1/1/23-12/31/23.³

Extension of Time

Unless specifically identified below, the deadlines identified in the July 1, 2024 opportunity notice are unchanged.

Interested parties to the Lawn Mowers from China AD order and the Pasta from

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 89 FR 54437 (July 1, 2024).

² *Id.*, 89 FR 54437, 54438.

³ *Id.*, 89 FR 54437, 54439.

Türkiye CVD order have 30 days after the date of this correction notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Interested parties may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of the Lawn Mowers from China AD order or the Pasta from Türkiye CVD order within 30 days of publication of this correction notice.

Commerce will publish in the **Federal Register** a notice of “Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation” for requests received within 30 days of this correction notice. If Commerce does not timely receive a request for review of entries covered by the Lawn Mowers from China AD order or the Pasta from Türkiye CVD order, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trade community.

Dated: September 19, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–21915 Filed 9–24–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA request for panel review.

SUMMARY: A Request for Panel Review was filed in the matter of Certain Softwood Lumber Products from

Canada: Final Results of the Countervailing Duty Administrative Review; 2022 with the U.S. Section of the USMCA Secretariat on September 18, 2024. The USMCA Secretariat has assigned case number USA–CDA–2024–10.12–03 to this request.

FOR FURTHER INFORMATION CONTACT:

Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: The final results of the investigation under review were determined by the United States Department of Commerce and were published in the **Federal Register** on August 19, 2024 (89 FR 67062).

Article 10.12 of chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews)*, which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 18, 2024);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 4, 2024);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: September 19, 2024.

Vidya Desai,

United States Secretary, USMCA Secretariat.

[FR Doc. 2024–21911 Filed 9–24–24; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE191]

Determination of Overfishing or an Overfished Condition

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that Western Atlantic sailfish is now overfished and the Pribilof Islands blue king crab remains overfished. NMFS, on behalf of the Secretary, is required to provide this notice whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

FOR FURTHER INFORMATION CONTACT: Diana Perry, (301) 427–7863.

SUPPLEMENTARY INFORMATION: Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify councils, and publish a notice in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Western Atlantic sailfish is now overfished. This determination is based on the most recent international stock assessment, completed in 2023 and using data through 2021, which indicates that the biomass is less than the minimum stock size threshold (MSST). NMFS continues to work with the International Commission for the Conservation of Atlantic Tunas to rebuild this stock through development of an international rebuilding program.

NMFS has determined that Pribilof Islands blue king crab is still overfished. This determination is based on the most recent assessment, completed in 2023 and using data through 2023, which indicates that the mature male biomass is less than the MSST. NMFS continues to work with the North Pacific Fishery

Management Council to rebuild this stock.

Dated: September 19, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-21868 Filed 9-24-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE315]

Transboundary Management Guidance Committee and Steering Committee Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of open public meeting.

SUMMARY: This notice provides the proposed schedule and agenda of the October 1–2, 2024, Transboundary Management Guidance Committee (TMGC) and U.S./Canada Transboundary Resources Steering Committee meetings. The members will meet and discuss concerns regarding transboundary resources outlined in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The TMGC meeting will be held October 1–2, 2024, and the Steering Committee meeting will be held on October 3, 2024. Daily start and end times are included in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The hybrid meeting is being held at the Courtyard Boston Downtown/North Station Marriott, 107 Beverly Street, Boston, Massachusetts 02114. Space in the building is very limited, and any members of the public looking to attend in-person should reach out to Anjali Bhardwaj (Anjali.Bhardwaj@noaa.gov, 978-281-9293) for more information. Conference call and webinar access information for the TMGC meeting can be found here: <https://www.nefmc.org/calendar/oct-1-3-2024-transboundary-management-guidance-committee-tmgc-meeting>. Conference call and webinar access information for the Steering Committee meeting is located here: <https://www.nefmc.org/calendar/oct-3-2024-u-s-canada-transboundary-resources-steering-committee-meeting>.

FOR FURTHER INFORMATION CONTACT: Anjali Bhardwaj, Fishery Management Specialist, Anjali.Bhardwaj@noaa.gov, 978-281-9293.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

The below agenda is subject to change.

Tuesday, October 1, 2024 From 9:30 a.m. to 5 p.m.

- 9:30 a.m.–9:45 a.m., Introductions and Discussion of Agenda
- 9:45 a.m.–10:15 a.m., Management Update
- 10:15 a.m.–10:30 a.m., Review and Discuss Domestic Science Information: 2024 Allocation Shares
- 10:30 a.m.–10:45 a.m., 2024 Domestic Science Information: Yellowtail Flounder
- 10:45 a.m.–11:30 a.m., 2024 Domestic Science Information: Atlantic Cod
- 11:30 a.m.–11:45 a.m., Break
- 11:45 a.m.–12:45 p.m., 2024 Domestic Science Information: Haddock
- 12:45 p.m.–2 p.m., Lunch
- 2 p.m.–3:30 p.m., Discussion of Guidance for 2025 Fishing Year
- 3:30 p.m.–3:45 p.m., Break
- 3:45 p.m.–5 p.m., Continued Discussion of Guidance for 2025 Fishing Year
- 5 p.m., Adjourn

Wednesday, October 2, 2024 From 9:30 a.m. to 4:30 p.m.

- 9:30 a.m.–10:45 a.m., Preparation of Guidance Document for 2025 Fishing Year
- 10:45 a.m.–11 a.m., Break
- 11 a.m.–12 p.m., Preparation of Guidance Document for 2025 Fishing Year
- 12 p.m.–1 p.m., Lunch
- 1 p.m.–2:30 p.m., CY 2025 Scientific Process Discussion
- 2:30 p.m.–2:45 p.m., Break
- 2:45 p.m.–4:30 p.m., Other Business
- 4:30 p.m., Adjourn

Thursday, October 3, 2024 From 8:30 a.m. to 11:55 a.m.

- 8:30 a.m.–8:45 a.m., Introductory Remarks from Steering Committee Co-Chairs
- 8:45 a.m.–9:15 a.m., Species at Risk Working Group Updates
- 9:15 a.m.–9:45 a.m., Domestic Stock Assessment Summaries
- 9:45 a.m.–10:30 a.m., Scientific Coordination Discussion
- 10:30 a.m.–11:15 a.m., TMGC Report
- 11:15 a.m.–11:35 a.m., Other Business as Needed
- 11:35 a.m.–11:55 a.m., Closing Remarks

Since the delineation of the international maritime boundary line in 1984, also known as the Hague Line, the United States and Canada have collaborated closely to sustainably

manage shared transboundary fisheries resources, including Eastern Georges Bank cod, Eastern Georges Bank haddock, and Georges Bank yellowtail flounder stocks. In 2000, the TMGC was established to provide guidance to both countries on the management and shared catch advice for these transboundary fish stocks. The arrangement also allows for collaboration and the opportunity to provide feedback on domestic scientific processes while also coordinating research and enforcement activities.

Representatives from NOAA Fisheries and the New England Fishery Management Council serve on the U.S. delegation to the TMGC to recommend shared catch advice annually. Catch advice is based on the best scientific information available and an agreed upon resource sharing allocation formula that considers historical proportions of fishery landings by U.S. and Canadian fishermen, as well as resource distribution based on trawl surveys. The 2023 Transboundary Management Committee Guidance Document, which summarizes last year's meeting, can be located online at <https://www.nefmc.org/calendar/sep-11-12-2023-transboundary-management-guidance-committee-tmgc-meeting>.

Dated: September 19, 2024.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-21866 Filed 9-24-24; 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; Rules for Patent Maintenance Fees

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 17, 2024 during a 60-day comment period (89 FR 58138).

This notice allows for an additional 30 days for public comment.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Rules for Patent Maintenance Fees.

OMB Control Number: 0651–0016.

Needs and Uses: Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(h), 1.362, 1.363, 1.366, 1.377, and 1.378, the USPTO charges fees for maintaining in force all patents based on applications filed on or after December 12, 1980, except for plant and design patents. Furthermore, maintenance fees are required for a reissue patent unless the patent being reissued did not require maintenance fees. Payment of these maintenance fees is due at 3½, 7½, and 11½ years after the date the patent was granted. See section 2504 of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) for more information.

If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable. Payments of maintenance fees that are submitted during the 6-month grace period before patent expiration must include the appropriate surcharge as indicated by 37 CFR 1.20(h). Submissions of maintenance fee payments and surcharges must include the relevant patent number and the corresponding United States application number in order to identify the correct patent and ensure proper crediting of the fee being paid. See MPEP 2506, 2510, and 2515 for more information.

If the USPTO refuses to accept and record a maintenance fee payment that was submitted prior to the expiration of a patent, the patentee may petition the Director to accept and record the maintenance fee under 37 CFR 1.377. This petition must be accompanied by the fee indicated in 37 CFR 1.17(g), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the Director to accept a delayed payment of the maintenance fee under 37 CFR 1.378(b). The Director may accept the payment of a maintenance fee after the expiration of the patent if the petitioner shows to the satisfaction of the Director that the delay in payment was unintentional. Petitions to accept unintentionally delayed

payment must also be accompanied by the required maintenance fee and the petition fee as set forth in 37 CFR 1.17(m). If the Director accepts the maintenance fee payment upon petition, then the patent is reinstated. If the USPTO denies a petition to accept delayed payment of a maintenance fee in an expired patent, the patentee may petition the Director to reconsider that decision under 37 CFR 1.378(d).

This information collection covers maintenance fee petition information, including the electronic interface and form provided by the USPTO to assist the public with maintenance fee petitions. To pay a maintenance fee after patent expiration, the maintenance fee payment and the petition fee, as set forth in 37 CFR 1.17(m), must be filed together with a petition to accept an unintentionally delayed payment of the maintenance fee in an expired patent under 37 CFR 1.378(b). The USPTO offers two different versions of the form for petitions to accept unintentionally delayed payments of maintenance fees: a web-based ePetition and form PTO/SB/66 (a fillable PDF). The USPTO recommends the use of the web-based ePetition. The USPTO does not offer forms for the petitions to review the refusal to accept the payment of a maintenance fee prior to the expiration of the patent under 37 CFR 1.377 or the petitions for the reconsideration of decisions on petitions refusing to accept the delayed payment of a maintenance fee in an expired patent under 37 CFR 1.378(d).

The fee address indication form (PTO/AIA/47 and PTO/SB/47) available at www.uspto.gov/patents/apply/forms was previously associated with this information collection. This form permits applicants, patentees, assignees, or their representatives of record to specify a “fee address” for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. This item is considered by OMB to be exempt from the PRA and therefore, though this item remains available, it is no longer included in this information collection.

Forms: (SB = Specimen Book).

- PTO/SB/66 (Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))

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: 2,616 respondents.

Estimated Number of Annual Responses: 2,616 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 1 hour and 8 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: 3,424 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: \$2,577,316.

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, 0651–0016.

Further information can be obtained by:

- *Email:* InformationCollection@uspto.gov. Include “0651–0016 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. 2024–21931 Filed 9–24–24; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Employers of National Service Form and Survey

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a public information collection request (ICR) entitled Employees of National Service Form and Survey for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 25, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Emily Smith, at (202) 391-1393 or by email to emsmith@americorps.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on June 12, 2024, at 89 FR 49863, with a comment period ending August 12, 2024. No public comments were received in response to the notice.

Title of Collection: Employers of National Service Enrollment Form and Survey.

OMB Control Number: 3045-0175.

Type of Review: Renewal.
Respondents/Affected Public: Businesses and organizations.
Total Estimated Number of Annual Responses: 1,180.
Total Estimated Number of Annual Burden Hours: 492.

Abstract: AmeriCorps is seeking to renew its Employers of National Service Enrollment Form and Survey. Organizations from all sectors either seeking to become, or already established as, Employers of National Service will be filling out these forms. This includes businesses, nonprofits, institutions of higher education, school districts, state and local governments, and Federal agencies. The purpose of the enrollment form is to document what the organization is committing to doing as an Employer of National Service and provide its contact information to AmeriCorps. The information gathered on the enrollment form will also allow AmeriCorps to display the organization’s information accurately online, as a resource for job seekers. It will also enable AmeriCorps to speak to the diversity within the program’s membership, both for internal planning and external audience use. The purpose of the survey form is to track the actions an employer has taken in the past year, gather stories of success or impact, collect quantitative hiring data relating to AmeriCorps and Peace Corps alumni, and provide organizations with an opportunity to update their contact and location data. AmeriCorps also seeks to continue using the currently approved information collection until the new information collection is approved by OMB. The currently approved information collection is due to expire on September 30, 2024.

Rhonda Taylor,

Director, Partnerships and Program Engagement.

[FR Doc. 2024-21919 Filed 9-24-24; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal advisory committee meeting of the Strategic Environmental Research and Development Program (SERDP) Scientific Advisory Board (SAB) will take place.

DATES: SERDP SAB will hold a meeting open to the public. Day 1—Tuesday, October 15, 2024, from 10 a.m. to 4:05 p.m. EDT. Day 2—Wednesday, October 16, 2024, from 10 a.m. to 5 p.m. EDT.

ADDRESSES: The meeting will be accessible by videoconference. Information for accessing the videoconference is provided in **SUPPLEMENTARY INFORMATION**, “Meeting Accessibility.”

FOR FURTHER INFORMATION CONTACT: Dr. Kimberly Spangler, Designated Federal Officer (DFO) 703-571-2477 (voice), kimberly.y.spangler.civ@mail.mil (email). Mailing address is SERDP Office, 3500 Defense Pentagon, Rm. 5C646, Washington, DC 20301-3500. Website: <https://serdp-estcp.org/about>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”) and 41 CFR 102-3.140 and 102-3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on <https://serdp-estcp.mil/about/programs?Id=b7ba8fa2-c6b0-4ae3-bdcd-50a3461ef4d9>. Purpose of the Meeting: The purpose of the meeting is for the SERDP SAB to make recommendations regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of SERDP Fiscal Year (FY) 2025.

Agenda: Tuesday, October 15, 2024, from 10:00 a.m. to 4:05 p.m.—Convene, SAB Business, Weapons Systems and Platforms Statement of Need Overview and Proposals, Resource Conservation and Resilience Statement of Need Overview and Proposals, Voting on Fiscal Year 2026 Recommendations, Public Comment Period, and Adjourn.

Wednesday, October 16, 2024, from 10:00 a.m. to 5:00 p.m.—Convene, Resource Conservation and Resilience Statement of Need Overview and Proposals, Voting on Fiscal Year 2026 Recommendations, SAB Business, Public Comment Period, and Adjourn.

Meeting Accessibility: Pursuant to 5 U.S.C. 1009(a) and 41 CFR 102-3.140

through 102–3.165, this meeting is open to the public. The meeting will be held via videoconference. If you wish to attend, you must register at this link: <https://www.zoomgov.com/j/1619982980?pwd=YVQ3WFRRajQ1TFJ0SHJ6VUNHSkRkZz09>.

Once registered, the web address and audio number will be provided. For purposes of transparency and attendance reporting you will be required to use your actual first name and last name as your username and provide your affiliation.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Dr. Kimberly Spangler at 703–571–2477 (voice) no later than Wednesday, October 9, 2024 (by 5:00 p.m. EST) so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.140 and 5 U.S.C. 1009(a)(3), interested persons may submit a written statement to the SERDP SAB.

Individuals submitting a statement must submit their statement no later than 5:00 p.m. EST, Friday, October 11, 2024, to kimberly.y.spangler.civ@mail.mil (email) or to 703–571–2477 (voice). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by Friday, October 11, 2024, prior to the meeting, then it may not be provided to, or considered by, the SERDP SAB during the October 15–16, 2024 meeting. The DFO, Dr. Kimberly Spangler will review all timely submissions with the SERDP SAB Chair and ensure such submissions are

provided to the members of the SERDP SAB before the meeting.

Public Comment Period: Just before the meeting adjourns the SERDP SAB Chair will ask those in the virtual meeting if there are any oral public comments. If there are, the chair will call on each person to speak. The individual will have up to 5 minutes to address the board. After oral comments, any comments submitted to the DFO will be read aloud.

Dated: September 20, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–21966 Filed 9–24–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Human Resources Activity, Department of Defense (DoD).

ACTION: Notice of revised per diem rates in non-foreign areas outside the Continental United States (U.S.).

SUMMARY: Defense Human Resources Activity publishes this Civilian Personnel Per Diem Bulletin Number 327. Bulletin Number 327 lists current per diem rates prescribed for reimbursement of subsistence expenses while on official Government travel to Alaska, Hawaii, the Commonwealth of Puerto Rico, and the possessions of the

United States. The Fiscal Year (FY) 2024 lodging and meal rate review for U.S. Virgin Islands resulted in rate changes for multiple locations.

DATES: The updated rates take effect October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Aguilar, (404) 345–0046, ashley.aguilar5.civ@mail.mil.

SUPPLEMENTARY INFORMATION: This document notifies the public of revisions in per diem rates prescribed by the Per Diem, Travel, and Transportation Allowance Committee for travel to non-foreign areas outside the continental United States. The FY 2024 lodging rate and meal rate review for U.S. Virgin Islands resulted in lodging and meal rate increases for two locations. Bulletin Number 327 is published in the **Federal Register** to ensure that Government travelers outside the DoD are notified of revisions to the current reimbursement rates.

If you believe the lodging, meal or incidental allowance rate for a locality listed in the following table is insufficient, you may request a rate review for that location. For more information about how to request a review, please see the Defense Travel Management Office's Per Diem Rate Review Frequently Asked Questions (FAQ) page at <https://www.travel.dod.mil/Travel-Transportation-Rates/Per-Diem/>.

Dated: September 18, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	[OTHER]	01/01	12/31	230	121	351	02/01/2024
ALASKA	ADAK	01/01	12/31	230	121	351	02/01/2024
ALASKA	ANCHORAGE	05/01	08/31	279	145	424	02/01/2024
ALASKA	ANCHORAGE	09/01	04/30	229	145	374	02/01/2024
ALASKA	BARROW	05/01	08/31	301	129	430	02/01/2024
ALASKA	BARROW	09/01	04/30	266	129	395	02/01/2024
ALASKA	BARTER ISLAND LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	BETHEL	01/01	12/31	230	101	331	02/01/2024
ALASKA	BETTLES	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	CAPE LISBURNE LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	CAPE NEWENHAM LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	CAPE ROMANZOF LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	CLEAR AB	01/01	12/31	230	121	351	02/01/2024
ALASKA	COLD BAY	01/01	12/31	230	121	351	02/01/2024
ALASKA	COLD BAY LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	COLDFOOT	01/01	12/31	249	93	342	02/01/2024
ALASKA	COPPER CENTER	01/01	12/31	230	121	351	02/01/2024
ALASKA	CORDOVA	01/01	12/31	230	106	336	02/01/2024
ALASKA	CRAIG	05/01	09/30	274	94	368	02/01/2024
ALASKA	CRAIG	10/01	04/30	179	94	273	02/01/2024
ALASKA	DEADHORSE	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	DELTA JUNCTION	01/01	12/31	230	106	336	02/01/2024
ALASKA	DENALI NATIONAL PARK	05/01	09/30	274	118	392	02/01/2024
ALASKA	DENALI NATIONAL PARK	10/01	04/30	179	118	297	02/01/2024
ALASKA	DILLINGHAM	01/01	12/31	320	113	433	02/01/2024
ALASKA	DUTCH HARBOR–UNALASKA	01/01	12/31	230	129	359	02/01/2024
ALASKA	EARECKSON AIR STATION	01/01	12/31	146	74	220	02/01/2024
ALASKA	EIELSON AFB	05/16	09/30	254	108	362	02/01/2024
ALASKA	EIELSON AFB	10/01	05/15	179	108	287	02/01/2024
ALASKA	ELFIN COVE	01/01	12/31	230	121	351	02/01/2024

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	ELMENDORF AFB	05/01	08/31	279	145	424	02/01/2024
ALASKA	ELMENDORF AFB	09/01	04/30	229	145	374	02/01/2024
ALASKA	FAIRBANKS	05/16	09/30	254	108	362	02/01/2024
ALASKA	FAIRBANKS	10/01	05/15	179	108	287	02/01/2024
ALASKA	FORT YUKON LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	FT. GREELY	01/01	12/31	230	106	336	02/01/2024
ALASKA	FT. RICHARDSON	05/01	08/31	279	145	424	02/01/2024
ALASKA	FT. RICHARDSON	09/01	04/30	229	145	374	02/01/2024
ALASKA	FT. WAINWRIGHT	05/16	09/30	254	108	362	02/01/2024
ALASKA	FT. WAINWRIGHT	10/01	05/15	179	108	287	02/01/2024
ALASKA	GAMBELL	01/01	12/31	230	121	351	02/01/2024
ALASKA	GLENNALLEN	01/01	12/31	230	121	351	02/01/2024
ALASKA	HAINES	01/01	12/31	230	113	343	02/01/2024
ALASKA	HEALY	05/01	09/30	274	118	392	02/01/2024
ALASKA	HEALY	10/01	04/30	179	118	297	02/01/2024
ALASKA	HOMER	05/01	09/30	274	124	398	02/01/2024
ALASKA	HOMER	10/01	04/30	179	124	303	02/01/2024
ALASKA	JB ELMENDORF-RICHARDSON	05/01	08/31	279	145	424	02/01/2024
ALASKA	JB ELMENDORF-RICHARDSON	09/01	04/30	229	145	374	02/01/2024
ALASKA	JUNEAU	02/01	10/31	274	118	392	02/01/2024
ALASKA	JUNEAU	11/01	01/31	214	118	332	02/01/2024
ALASKA	KAKTOVIK	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	KAVIK CAMP	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	KENAI-SOLDOTNA	05/01	10/31	274	113	387	02/01/2024
ALASKA	KENAI-SOLDOTNA	11/01	04/30	179	113	292	02/01/2024
ALASKA	KENNICOTT	01/01	12/31	230	121	351	02/01/2024
ALASKA	KETCHIKAN	05/01	09/30	275	118	393	02/01/2024
ALASKA	KETCHIKAN	10/01	04/30	160	118	278	02/01/2024
ALASKA	KING SALMON	01/01	12/31	230	121	351	02/01/2024
ALASKA	KING SALMON LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	KLAWOCK	01/01	12/31	230	94	324	02/01/2024
ALASKA	KODIAK	02/01	10/31	231	109	340	02/01/2024
ALASKA	KODIAK	11/01	01/31	138	109	247	02/01/2024
ALASKA	KOTZEBUE	01/01	12/31	230	121	351	02/01/2024
ALASKA	KULIS AGS	05/01	08/31	279	145	424	02/01/2024
ALASKA	KULIS AGS	09/01	04/30	229	145	374	02/01/2024
ALASKA	MCCARTHY	01/01	12/31	230	121	351	02/01/2024
ALASKA	MCGRATH	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	MURPHY DOME	05/16	09/30	254	108	362	02/01/2024
ALASKA	MURPHY DOME	10/01	05/15	179	108	287	02/01/2024
ALASKA	NOME	05/01	08/31	274	118	392	02/01/2024
ALASKA	NOME	09/01	04/30	242	118	360	02/01/2024
ALASKA	NOSC ANCHORAGE	05/01	08/31	279	145	424	02/01/2024
ALASKA	NOSC ANCHORAGE	09/01	04/30	229	145	374	02/01/2024
ALASKA	NUIQSUT	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	OLIKTOK LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	PALMER	05/01	09/30	274	131	405	02/01/2024
ALASKA	PALMER	10/01	04/30	196	131	327	02/01/2024
ALASKA	PETERSBURG	01/01	12/31	230	108	338	02/01/2024
ALASKA	POINT BARROW LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	POINT HOPE	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	POINT LONELY LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	PORT ALEXANDER	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	PORT ALSWORTH	01/01	12/31	230	121	351	02/01/2024
ALASKA	PRUDHOE BAY	01/01	12/31	230	121	* 351	02/01/2024
ALASKA	SELDOVIA	05/01	09/30	274	124	398	02/01/2024
ALASKA	SELDOVIA	10/01	04/30	179	124	303	02/01/2024
ALASKA	SEWARD	04/01	09/30	284	164	448	02/01/2024
ALASKA	SEWARD	10/01	03/31	179	164	343	02/01/2024
ALASKA	SITKA-MT. EDGE CUMBE	05/01	09/30	274	116	390	02/01/2024
ALASKA	SITKA-MT. EDGE CUMBE	10/01	04/30	199	116	315	02/01/2024
ALASKA	SKAGWAY	05/01	09/30	274	118	392	02/01/2024
ALASKA	SKAGWAY	10/01	04/30	179	118	297	02/01/2024
ALASKA	SLANA	01/01	12/31	230	121	351	02/01/2024
ALASKA	SPARREVOHN LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	SPRUCE CAPE	03/01	09/30	274	109	383	02/01/2024
ALASKA	SPRUCE CAPE	10/01	02/28	179	109	288	02/01/2024
ALASKA	ST. GEORGE	01/01	12/31	230	121	351	02/01/2024
ALASKA	TALKEETNA	01/01	12/31	230	123	353	02/01/2024
ALASKA	TANANA	05/01	08/31	274	118	392	02/01/2024
ALASKA	TANANA	09/01	04/30	242	118	360	02/01/2024
ALASKA	TATALINA LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	TIN CITY LRRS	01/01	12/31	230	121	351	02/01/2024
ALASKA	TOK	01/01	12/31	230	113	343	02/01/2024
ALASKA	VALDEZ	05/16	09/15	274	110	384	02/01/2024
ALASKA	VALDEZ	09/16	05/15	179	110	289	02/01/2024
ALASKA	WAINWRIGHT	01/01	12/31	295	77	372	02/01/2024
ALASKA	WASILLA	06/01	09/30	274	104	378	02/01/2024
ALASKA	WASILLA	10/01	05/31	179	104	283	02/01/2024
ALASKA	WRANGELL	05/01	09/30	275	118	393	02/01/2024
ALASKA	WRANGELL	10/01	04/30	160	118	278	02/01/2024
ALASKA	YAKUTAT	06/01	09/30	350	111	461	02/01/2024
ALASKA	YAKUTAT	10/01	05/31	179	111	290	02/01/2024

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
AMERICAN SAMOA	AMERICAN SAMOA	01/01	12/31	149	103	252	05/01/2023
AMERICAN SAMOA	PAGO PAGO	01/01	12/31	149	103	252	05/01/2023
GUAM	GUAM (INCL ALL MIL INSTAL)	01/01	12/31	159	124	283	02/01/2023
GUAM	JOINT REGION MARIANAS (ANDERSEN).	01/01	12/31	159	124	283	02/01/2023
GUAM	JOINT REGION MARIANAS (NAVAL BASE).	01/01	12/31	159	124	283	02/01/2023
GUAM	TAMUNING	01/01	12/31	159	124	283	02/01/2023
HAWAII	[OTHER]	01/01	12/31	229	157	386	02/01/2023
HAWAII	CAMP H M SMITH	01/01	12/31	202	157	359	02/01/2023
HAWAII	CNI NAVMAG PEARL HARBOR-HICKAM.	01/01	12/31	202	157	359	02/01/2023
HAWAII	FT. DERUSSEY	01/01	12/31	202	157	359	02/01/2023
HAWAII	FT. SHAFTER	01/01	12/31	202	157	359	02/01/2023
HAWAII	HICKAM AFB	01/01	12/31	202	157	359	02/01/2023
HAWAII	HONOLULU	01/01	12/31	202	157	359	02/01/2023
HAWAII	ISLE OF HAWAII: HILO	01/01	12/31	199	146	345	02/01/2023
HAWAII	ISLE OF HAWAII: LOCATIONS OTHER THAN HILO.	01/01	12/31	229	173	402	02/01/2023
HAWAII	ISLE OF KAUAI	01/01	12/31	325	165	490	02/01/2023
HAWAII	ISLE OF LANAI	01/01	12/31	229	157	386	02/01/2023
HAWAII	ISLE OF MAUI	01/01	12/31	354	153	507	02/01/2023
HAWAII	ISLE OF MOLOKAI	01/01	12/31	229	157	386	02/01/2023
HAWAII	ISLE OF OAHU	01/01	12/31	202	157	359	02/01/2023
HAWAII	JB PEARL HARBOR-HICKAM	01/01	12/31	202	157	359	02/01/2023
HAWAII	KAPOLEI	01/01	12/31	202	157	359	02/01/2023
HAWAII	KEKAHA PACIFIC MISSILE RANGE FAC.	01/01	12/31	325	165	490	03/01/23
HAWAII	KILAUEA MILITARY CAMP	01/01	12/31	199	146	345	02/01/2023
HAWAII	LIHUE	01/01	12/31	325	165	490	02/01/2023
HAWAII	MCB HAWAII	01/01	12/31	202	157	359	02/01/2023
HAWAII	NCTAMS PAC WAHIAWA	01/01	12/31	202	157	359	02/01/2023
HAWAII	NOSC PEARL HARBOR	01/01	12/31	202	157	359	02/01/2023
HAWAII	PEARL HARBOR	01/01	12/31	202	157	359	02/01/2023
HAWAII	PMRF BARKING SANDS	01/01	12/31	325	165	490	02/01/2023
HAWAII	SCHOFIELD BARRACKS	01/01	12/31	202	157	359	02/01/2023
HAWAII	TRIPLER ARMY MEDICAL CENTER.	01/01	12/31	202	157	359	02/01/2023
HAWAII	WHEELER ARMY AIRFIELD	01/01	12/31	202	157	359	02/01/2023
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01	12/31	125	81	206	05/01/2023
NORTHERN MARIANA ISLANDS ..	ROTA	01/01	12/31	130	125	255	05/01/2023
NORTHERN MARIANA ISLANDS ..	SAIPAN	01/01	12/31	161	113	274	05/01/2023
NORTHERN MARIANA ISLANDS ..	TINIAN	01/01	12/31	145	95	240	05/01/2023
PUERTO RICO	[OTHER]	01/01	12/31	183	116	299	06/01/2024
PUERTO RICO	AGUADILLA	01/01	12/31	149	97	246	06/01/2024
PUERTO RICO	BAYAMON	12/01	06/30	245	148	393	06/01/2024
PUERTO RICO	BAYAMON	07/01	11/30	217	148	365	06/01/2024
PUERTO RICO	CAROLINA	12/01	06/30	245	148	393	06/01/2024
PUERTO RICO	CAROLINA	07/01	11/30	217	148	365	06/01/2024
PUERTO RICO	CEIBA	01/01	12/31	183	110	293	06/01/2024
PUERTO RICO	CULEBRA	01/01	12/31	183	116	299	06/01/2024
PUERTO RICO	FAJARDO [INCL ROOSEVELT RDS NAVSTAT].	01/01	12/31	183	110	293	06/01/2024
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	12/01	06/30	245	148	393	06/01/2024
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	07/01	11/30	217	148	365	06/01/2024
PUERTO RICO	HUMACAO	01/01	12/31	183	110	293	06/01/2024
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	12/01	06/30	245	148	393	06/01/2024
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	07/01	11/30	217	148	365	06/01/2024
PUERTO RICO	LUQUILLO	01/01	12/31	183	110	293	06/01/2024
PUERTO RICO	MAYAGUEZ	01/01	12/31	129	116	245	06/01/2024
PUERTO RICO	PONCE	01/01	12/31	149	146	295	06/01/2024
PUERTO RICO	RIO GRANDE	01/01	12/31	219	97	316	06/01/2024
PUERTO RICO	SABANA SECA [INCL ALL MILITARY].	12/01	06/30	245	148	393	06/01/2024
PUERTO RICO	SABANA SECA [INCL ALL MILITARY].	07/01	11/30	217	148	365	06/01/2024
PUERTO RICO	SAN JUAN & NAV RES STA	12/01	06/30	245	148	393	06/01/2024
PUERTO RICO	SAN JUAN & NAV RES STA	07/01	11/30	217	148	365	06/01/2024
PUERTO RICO	VIEQUES	01/01	12/31	183	125	308	06/01/2024
VIRGIN ISLANDS (U.S.)	ST. CROIX	07/01	10/31	247	115	362	10/01/2024
VIRGIN ISLANDS (U.S.)	ST. CROIX	11/01	06/30	299	115	414	10/01/2024
VIRGIN ISLANDS (U.S.)	ST. JOHN	04/15	12/15	324	150	474	10/01/2024
VIRGIN ISLANDS (U.S.)	ST. JOHN	12/16	04/14	414	150	564	10/01/2024
VIRGIN ISLANDS (U.S.)	ST. THOMAS	04/15	12/15	324	150	474	10/01/2024
VIRGIN ISLANDS (U.S.)	ST. THOMAS	12/16	04/14	414	150	564	10/01/2024
WAKE ISLAND	WAKE ISLAND	01/01	12/31	133	73	206	05/01/2023

*Where meals are included in the lodging rate, a traveler is only allowed a meal rate on the first and last day of travel.

[FR Doc. 2024–21703 Filed 9–24–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0117]

Agency Information Collection Activities; Comment Request; Private School Universe Survey (PSS) 2025–26 and 2027–28 Data Collections, and 2027–28 PSS Frame Development Activities**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).**DATES:** Interested persons are invited to submit comments on or before November 25, 2024.**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2024–SCC–0117. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on

proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Private School Universe Survey (PSS) 2025–26 and 2027–28 Data Collections, and 2027–28 PSS Frame Development Activities.

OMB Control Number: 1850–0641.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 32,550.

Total Estimated Number of Annual Burden Hours: 5,981.

Abstract: The National Center for Education Statistics (NCES), within the U.S. Department of Education, conducts the Private School Universe Survey (PSS), a national survey of private elementary and secondary schools. The PSS is designed to collect biennial data on the total number of private schools, teachers, and students; and to create an NCES universe frame of private schools that serve as a sampling frame for NCES surveys. This survey is an ongoing project to improve NCES universe and sample data on private schools.

This request is to conduct the 2025–26 and 2027–28 Private School Universe Survey (PSS) data collections, and the 2027–28 PSS frame-development activities.

Dated: September 20, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–21959 Filed 9–24–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. 24–87–LNG]

Gato Negro Permitium Dos, S.A.P.I. de C.V.; Application for Long-Term Authorization To Re-Export U.S.-Sourced Natural Gas in the Form of Liquefied Natural Gas From Mexico to Non-Free Trade Agreement Countries**AGENCY:** Office of Fossil Energy and Carbon Management, Department of Energy.**ACTION:** Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on August 21, 2024, by Gato Negro Permitium Dos, S.A.P.I. de C.V. (Gato Dos). As relevant here, Gato Dos requests long-term authorization to re-export U.S.-sourced natural gas in the form of liquefied natural gas (LNG) to non-free trade agreement countries in a volume equivalent to 0.556 billion cubic feet per day (Bcf/d). Gato Dos seeks to re-export this LNG by vessel from the Gato Negro Manzanillo LNG Plant (Manzanillo Plant), under development in the State of Colima, Mexico. Gato Dos filed the Application under the Natural Gas Act (NGA).

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, November 25, 2024.

ADDRESSES:

Electronic Filing by Email (Strongly encouraged): fergas@hq.doe.gov.

Postal Mail, Hand Delivery, or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE-34) Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-4749 or (202) 586-7893, jennifer.wade@hq.doe.gov or peri.ulrey@hq.doe.gov

Cassandra Bernstein, U.S. Department of Energy (GC-76) Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW, Washington, DC 20585, (240) 780-1691, cassandra.bernstein@hq.doe.gov

SUPPLEMENTARY INFORMATION: As relevant here, Gato Dos requests long-term authorization to re-export U.S.-sourced natural gas following liquefaction at the Manzanillo Plant in the State of Colima, Mexico, which is being developed by Gato Dos's affiliate, Gato Negro Manzanillo S.A.P.I., de C.V. Gato Dos seeks to re-export this LNG in a volume equivalent to 0.556 Bcf/d of natural gas from the Manzanillo Plant to countries with which the United States has not entered into a free trade agreement requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (non-FTA countries) under section 3(a) of the NGA.¹

Gato Dos seeks this authorization on its own behalf and as agent for other parties that hold title to the LNG at the time of export. Gato Dos requests the authorization for a term beginning on the date of first export and extending through December 31, 2050.

Additional details can be found in Gato Dos's Application, posted on the DOE website at <https://www.energy.gov/sites/default/files/2024-08/Gato%20Permitium%20Dos%20LNG%20Application-non-FTA%20Application%20%288-7-24%29.pdf>.

¹ 15 U.S.C. 717b(a). As discussed in the Application, on May 10, 2024, an affiliate of Gato Dos, Gato Negro Permitium Uno, S.A.P.I. de C.V. (Gato Uno), filed an application with DOE in Docket No. 24-43-LNG. Gato Uno requests long-term authorization to export U.S.-sourced natural gas to Mexico by pipeline, and after liquefaction in Mexico at the Manzanillo Plant, to re-export the U.S.-sourced natural gas as LNG to FTA countries. Gato Dos states that Gato Uno's FTA application involves the same site and liquefaction capacity to be used by Gato Dos. Gato Uno's FTA application is currently pending, and DOE will review it separately under NGA section 3(c), 15 U.S.C. 717b(c).

DOE Evaluation

In reviewing Gato Dos's Application, DOE will consider any issues required by law or policy under NGA section 3(a), DOE's regulations, and any other documents deemed appropriate. Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding before DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, a motion to intervene or notice of intervention, or request for additional procedures, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to this proceeding evaluating the Application must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to this proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, notices of intervention, or requests for additional procedures must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.

Filings may be submitted using one of the following methods:

- (1) Submitting the filing electronically at fergas@hq.doe.gov;
- (2) Mailing the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section; or
- (3) Hand delivering the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section.

For administrative efficiency, DOE prefers filings to be filed electronically. All filings must include a reference to "Docket No. 24-87-LNG" or "Gato Negro Permitium Dos Application" in the title line.

For electronic submissions: Please include all related documents and

attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Notice, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at www.energy.gov/fecm/regulation.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on September 19, 2024.

Amy R. Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2024-21924 Filed 9-24-24; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 2715-026]

Kaukauna Utilities; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a new license to continue to operate and maintain the Combined Locks Hydroelectric Project No. 2715 (project). The project is located on the Lower Fox River in Outagamie County, Wisconsin. Commission staff has prepared an Environmental Assessment (EA) for the project.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental

protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (<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. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or at (866) 208-3676 (toll-free), or (202) 502-8659 (TTY).

You may also register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name at the end of your comments. For assistance, please contact FERC Online Support. 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. The first page of any filing should include docket number P-2715-026.

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.

For further information, contact Kelly Wolcott at (202) 502-6480 or kelly.wolcott@ferc.gov.

Dated: September 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-21889 Filed 9-24-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4202-025]

KEI Power Management, LLC; Notice of Reasonable Period of Time for Water Quality Certification Application

On September 12, 2024, the Maine Department of Environmental Protection (Maine DEP) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification from KEI Power Management, LLC, in conjunction with the above captioned project, on July 29, 2024. Pursuant to section 4.34(b)(5) of the Commission's regulations,¹ we hereby notify the Maine DEP of the following:

Date of Receipt of the Certification Request: July 29, 2024.

Reasonable Period of Time to Act on the Certification Request: One year, July 29, 2025.

If the Maine DEP fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: September 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-21884 Filed 9-24-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15351-000]

Energy Recycling Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 24, 2024, Energy Recycling Company, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the proposed Iron Range Pumped Storage Project, a closed loop pumped

storage project, to be located near the City of Marble, Itasca County, Minnesota. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Iron Range Pumped Storage Project would consist of the following: (1) a lower reservoir proposed approximately 2,700 feet below the ground surface; (2) an enclosed upper reservoir proposed to be constructed of a concrete lined rockfill embankment; (3) a reinforced concrete 18-foot-diameter intake with a "morning glory" configuration; (4) a 2,800-foot-long vertical shaft penstock having a diameter of 16 feet connecting the upper reservoir to the powerhouse; (5) a 200-foot-long, 70-foot-wide, and 130-foot-high underground powerhouse located approximately 2,700 feet below the ground surface; (6) a 240-foot-long and 40-foot-high underground transformer gallery lined with concrete; (7) two 333-megawatt hydroelectric pump/turbines, (8) a new interconnection line approximately 200 to 500 feet long, joining a new substation adjacent to the project to an existing 230-kilovolt transmission line; and (9) a new pumping system to carry water to the upper reservoir. The proposed project would have an estimated annual generation of 1,450 gigawatt-hours.

Applicant Contact: Douglas A. Spaulding, Nelson Energy, 1030 Tyrol Trail, Minnesota, MN 55416; phone: (612) 599-8493.

FERC Contact: Shivani Khetani; phone: (212) 273-5917, or by email at shivani.khetani@ferc.gov.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

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

¹ 18 CFR [4.34(b)(5)/5.23(b)/153.4/157.22].

contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at <https://ferconline.ferc.gov/eFiling.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. 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. The first page of any filing should include docket number P-15351-000.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's website at <https://elibrary.ferc.gov/eLibrary/search>. Enter the docket number (P-15351) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 18, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-21886 Filed 9-24-24; 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: EC23-117-001.

Applicants: Heritage Power, LLC, J. Aron & Company LLC.

Description: Notice of Change in Circumstances of Heritage Power, LLC et al.

Filed Date: 9/16/24.

Accession Number: 20240916-5155.

Comment Date: 5 p.m. ET 9/30/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24-291-000.

Applicants: Prairie Center Energy LLC.

Description: Prairie Center Energy LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/18/24.

Accession Number: 20240918-5037.

Comment Date: 5 p.m. ET 10/9/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-3125-018; ER10-3100-017; ER10-3109-015.

Applicants: Washington County Power, LLC, MPC Generating, LLC, AL Sandersville, LLC.

Description: Notice of Non-Material Change in Status of AL Sandersville, LLC et al.

Filed Date: 9/18/24.

Accession Number: 20240918-5116.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-708-001.

Applicants: Transource Oklahoma, LLC, Southwest Power Pool, Inc.

Description: Compliance filing: Southwest Power Pool, Inc. submits tariff filing per 35: Transource Oklahoma Amended Order No. 864 Compliance Filing to be effective 7/1/2021.

Filed Date: 9/18/24.

Accession Number: 20240918-5035.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-2566-001.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Tariff Amendment: 2024-09-18 CapX Brookings CMA—757—Errata to be effective 6/21/2024.

Filed Date: 9/18/24.

Accession Number: 20240918-5125.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-2567-001.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Tariff Amendment: 2024-09-18 CapX Brookings OMA—537—Errata to be effective 6/21/2024.

Filed Date: 9/18/24.

Accession Number: 20240918-5119.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-2568-001.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Tariff Amendment: 2024-09-18 CapX Brookings TCEA—538—Errata to be effective 6/21/2024.

Filed Date: 9/18/24.

Accession Number: 20240918-5111.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-2663-000.

Applicants: Anticline Wind, LLC.

Description: Supplement to 08/01/2024 Anticline Wind, LLC tariff filing.

Filed Date: 9/12/24.

Accession Number: 20240912-5209.

Comment Date: 5 p.m. ET 9/23/24.

Docket Numbers: ER24-2664-000.

Applicants: Cedar Springs Wind IV, LLC.

Description: Supplement to 08/01/2024 Clear Springs Wind IV, LLC tariff filing.

Filed Date: 9/12/24.

Accession Number: 20240912-5208.

Comment Date: 5 p.m. ET 9/23/24.

Docket Numbers: ER24-2808-001.

Applicants: HV Sun SFA Manager 1, LLC.

Description: Tariff Amendment: HV Sun SFA Manager 1, LLC Amended Shared Facilities Agreement to be effective 9/18/2024.

Filed Date: 9/17/24.

Accession Number: 20240917-5155.

Comment Date: 5 p.m. ET 9/27/24.

Docket Numbers: ER24-2869-000.

Applicants: Downeast Wind, LLC.

Description: Report Filing: Supplement to Submit Application for MBR Authorization Filing to be effective N/A.

Filed Date: 9/18/24.

Accession Number: 20240918-5078.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-3062-000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii): ATSI submits Construction Agmnts, SA No. 6943 and 7172 to be effective 11/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918-5020.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-3063-000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii): ATSI submits Construction Agmnts, SA No. 7170, 7171, 7178 to be effective 11/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918-5021.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24-3064-000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii): AEPSC submits I&M and

WABASH Coordination Agmt SA No. 7370 to be effective 9/1/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5025.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3065–000.

Applicants: Prairie Center Energy LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 10/28/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5043.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3066–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Middleton Solar Farm LGIA Termination Filing to be effective 9/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5070.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3067–000.

Applicants: Midcontinent Independent System Operator, Inc., Entergy Services, LLC.

Description: Compliance filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35: 2024–09–18 Entergy Order 864 ADIT Compliance to be effective 1/1/2018.

Filed Date: 9/18/24.

Accession Number: 20240918–5077.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3068–000.

Applicants: Maine Yankee Atomic Power Company.

Description: § 205(d) Rate Filing: 2024–09–18 Filing to Update Maine Yankee Decommissioning Cost Estimate to be effective 11/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5079.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3069–000.

Applicants: Yankee Atomic Electric Company.

Description: § 205(d) Rate Filing: 2024–09–18 Filing to Update Yankee Atomic Decommissioning Cost Estimate to be effective 11/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5082.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3070–000.

Applicants: Connecticut Yankee Atomic Power Company.

Description: § 205(d) Rate Filing: 2024–09–18 Filing to Update Connecticut Yankee Decommissioning Cost Estimate to be effective 11/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5084.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3071–000.

Applicants: ISO New England Inc.

Description: § 205(d) Rate Filing: Revisions to FCM Delivery Financial Assurance Calculation in the FAP to be effective 2/1/2025.

Filed Date: 9/18/24.

Accession Number: 20240918–5093.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3072–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5382; Queue No. W3–003/AD2–026/AE1–156 (amend) to be effective 11/18/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5097.

Comment Date: 5 p.m. ET 10/9/24.

Docket Numbers: ER24–3073–000.

Applicants: Idaho Power Company.

Description: Petition for Limited Waiver of Idaho Power Co.

Filed Date: 9/13/24.

Accession Number: 20240913–5246.

Comment Date: 5 p.m. ET 10/4/24.

Docket Numbers: ER24–3074–000.

Applicants: Black Hills Colorado Electric, LLC.

Description: § 205(d) Rate Filing: Amended and Restated LGIAs with BHCOE and Black Hills Colorado IPP, LLC to be effective 8/19/2024.

Filed Date: 9/18/24.

Accession Number: 20240918–5101.

Comment Date: 5 p.m. ET 10/9/24.

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 18, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–21885 Filed 9–24–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–22–000]

Commission Information Collection Activities (FERC–537); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–537 (Gas Pipeline Certificates: Construction, Acquisition, and Abandonment). The Commission will submit this request for comment to the Office of Management and Budget (OMB) for review. No comments were received on the 60-day notice.

DATES: Comments on the collection of information are due October 25, 2024.

ADDRESSES: Send written comments on FERC–537 (1902–0060) to OMB through www.reginfo.gov/public/do/PRAMain. Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Numbers in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain.

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC24–22–000) by one of the following methods:

Electronic filing through <https://www.ferc.gov>, is preferred.

• **Electronic Filing:** Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

• For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:*

Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (Including Courier) Delivery:*

Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain. Using the search function under the “Currently Under Review” field, select Federal Energy Regulatory Commission; click “submit,” and select “comment” to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: <https://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at: (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <https://www.ferc.gov/ferc-online/overview>.

FOR FURTHER INFORMATION CONTACT:

Kayla Williams may be reached by email at DataClearance@FERC.gov, and telephone at (202) 502-6468.

SUPPLEMENTARY INFORMATION:

Title: FERC-537: Gas Pipeline Certificates: Construction, Acquisition, and Abandonment.

OMB Control No.: 1902-0060.

Type of Request: Three-year extension of the FERC-537 information collection

requirements with no changes to the reporting requirements.

Abstract: The FERC-537 information collection is in place for the Commission to carry out its responsibilities under section 7 of the Natural Gas Act (NGA). Section 7 of the NGA ¹ requires natural gas companies to obtain Commission approval before constructing, extending, or abandoning facilities or service. The Commission reviews and analyses the information filed under the FERC-537 to determine whether to approve or deny the requested authorization. After reviewing the supplied information, the Commission may grant a request to construct or extend pipeline facilities or service by issuing a certificate of public convenience and necessity. If the Commission failed to collect these data, it would lose its ability to review relevant information to determine whether the requested certificate should be authorized.

The Commission implements section 7 of the NGA under regulations at 18 CFR part 157.

The data generally required to be submitted in a certificate filing consists of identification of the company and responsible officials, factors considered in the location of the facilities, and the impact on the area for environmental considerations. As applicable to the specific request, applicants may provide:

- Flow diagrams showing the design capacity for engineering design verification and safety determination;
- Cost of proposed facilities, plans for financing, and estimated revenues and expenses related to the proposed facility for accounting and financial evaluation; or
- Existing and proposed storage capacity and pressures and reservoir

engineering studies for requests to increase storage capacity.

Applications for an order authorizing abandonment of facilities or service must contain a statement providing in detail the reasons for the requested abandonment and must contain exhibits listed at 18 CFR 157.18, as well as an affidavit showing the consent of existing customers. With some exceptions, such applications also must include an environmental report.

Applicants filing in accordance with 18 CFR part 157, subpart A (either for a certificate or for abandonment) generally must make a good-faith effort to provide notice of the application to all affected landowners, towns, communities, and government agencies.

Certain self-implementing construction and abandonment programs do not require the filing of applications. However, those types of programs do require the filing of annual reports, so many less significant actions can be reported in a single filing/response and less detail would be required. Additionally, requests for an increase of pipeline capacity must include a statement that demonstrates compliance with the Commission's Certificate Policy Statement by making a showing that the cost of the expansion will not be subsidized by existing customers and that there will not be adverse economic impacts to existing customers, competing pipelines or their customers, nor to landowners and to surrounding communities.

Type of Respondents: Jurisdictional natural gas companies.

Estimate of Annual Burden:² The Commission estimates the annual public reporting burden for the information collection as:

FERC-537 (GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT)³

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁴	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) ⁵
18 CFR 157.5-.11 (Interstate Certificate and Abandonment Applications).	31	1.39	* 43	500 hrs.; \$50,000	21,500 hrs.; \$2,150,000	\$69,355
18 CFR 157.53 (Pipeline Purging/Testing Exemptions).	1	1	1	50 hrs.; 5,000	50 hrs.; 5,000	5,000
18 CFR 157.201-.209; 157.211; 157.214-.218 (Blanket Certificates Prior to Notice Filings).	30	2.125	63.75	200 hrs.; 20,000	12,750 hrs.; 1,275,000	42,500
18 CFR 157.201-.209; 157.211; 157.214-.218 (Blanket Certificates—Annual Reports).	176	1	176	50 hrs.; 5,000	8,800hrs.; 880,000	5,000
18 CFR 284.11 (NGPA Section 311 Construction—Annual Reports).	75	1	75	50 hrs.; 5,000	3,750 hrs.; 375,000	5,000
18 CFR 284.8 ⁶ (Request for Waiver of Capacity Release Regulations).	31	1.39	* 43	10 hrs.; 1,000	430 hrs.; 43,000	1,390

¹ 15 U.S.C. 717f.

² Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide

information to or for a Federal agency. Refer to 5 CFR 1320.3 for additional information.

FERC-537 (GAS PIPELINE CERTIFICATES: CONSTRUCTION, ACQUISITION, AND ABANDONMENT)³—Continued

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ⁴	Total annual burden hours & total annual cost	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) ⁵
18 CFR 284.13(e) and 284.126(a) (Interstate and Intrastate Bypass Notice).....	2	1	2	30 hrs.; 3,000	60 hrs.; 6,000	3,000
18 CFR 284.221 (Blanket Certificates)	1	1	1	100 hrs.; 10,000	100 hrs.; 10,000	10,000
18 CFR 284.224 (Hinshaw Blanket Certificates) ..	2	1	2	75 hrs.; 7,500	150 hrs.; 15,000	7,500
18 CFR 157.5-.11; 157.13-.20 (Non-facility Certificate or Abandonment Applications. Project based; Labor wages	11	1.36	15	75 hrs.; 7,500	1,125 hrs.; 112,500	10,227
.....	22	1	22	15 hrs. 1,500	330 hrs. 33,000	1,500
Total .....	.....	.....	* 444	.....	49,045 hrs.; 4,539,000	.....

* Rounded.

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 18, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-21890 Filed 9-24-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 12137-01-OAR]

Cross-Media Electronic Reporting: Electronic Submission of Reports, Notifications, and Other Submission Types

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) allowance of the electronic submission of reports, notifications, or other required submission types (in an acceptable digital format) in certain Clean Air Act (CAA) regulations that do not already have electronic reporting requirements (*i.e.*, reports, notifications, or other submission types required to be submitted in paper format or as specified in this notice, an email). This action is consistent with the provisions of the Cross-Media Electronic Reporting Rule (CROMERR) and streamlines reporting requirements by allowing regulated entities to submit specified reports, notifications, or other submission types electronically via the Compliance and Emissions Data Reporting Interface (CEDRI) on the EPA's Central Data Exchange (CDX) (see <https://cdx.epa.gov>), or to another EPA managed electronic document receiving system that may be designated for the receipt of specified submissions in the future. Additionally, performance test reports that do not already have CROMERR compliant electronic reporting requirements may utilize the Electronic Reporting Tool (ERT) (see <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) to submit those reports to CEDRI in the form of an ERT submission package. The authority for the designation of alternative EPA electronic document receiving systems

may not be redelegated to state, local, or tribal authorities. When a report, notification, or other submission type submitted under this new electronic submission option contains confidential business information (CBI), a file with the CBI omitted or redacted must be submitted to the CEDRI system and a separate, complete submission containing the claimed CBI information must be submitted through the described CBI submission process.

DATES: The allowance to electronically submit reports and notifications to CEDRI is effective September 25, 2024.

FOR FURTHER INFORMATION CONTACT: Aiden Titel, Measurement Policy Group, Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Office of Air and Radiation, Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711; telephone number: (919) 541-4836; email address: titel.aiden@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Submission of Reports, Notifications, and Other Submission Types, and CROMERR Compliance

On October 13, 2005, the final CROMERR program was published in the **Federal Register** (70 FR 59748) and codified as part 3 of title 40 of the Code of Federal Regulations (CFR). CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. In accordance with 40 CFR 3.2(a), this notice announces that the EPA is prepared to receive, in electronic form, 40 CFR parts 59, 60, 61, 62, and 63 reports, notifications, or other submission types that do not already have electronic reporting requirements (*i.e.*, paper reports, notifications, or other submission types), and emailed submissions that are associated with 40

³ Changes to estimated number of respondents were based on average number of respondents over the past three years.

⁴ The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * \$100.00/hour = Average cost/response. The figure is the 2024 FERC average hourly cost (for wages and benefits) of 100.00 (and an average annual salary of \$207,786/year). Commission staff is using the FERC average salary because we consider any reporting requirements completed in response to the FERC-537 to be compensated at rates similar to the work of FERC employees.

⁵ Each of the figures in this column are rounded to the nearest dollar.

⁶ A Certificate Abandonment Application would require waiver of the Commission's capacity release regulations in 18 CFR 284.8; therefore this activity is associated with Interstate Certificate and Abandonment Applications.

CFR part 60 subpart AAA and 40 CFR part 60 subpart QQQQ. The submission method for reports, notifications, or other submission types affected by this allowance is to upload the reports, notifications, or other submission types in an acceptable digital format to CEDRI on the EPA's CDX electronic reporting platform, or to another EPA electronic document receiving system that the Administrator may designate for the receipt of specified submissions, complying with the system's requirements for submission. The authority for the designation of alternative EPA electronic document receiving systems may not be redelegated to state, local, or tribal authorities. For performance tests impacted by this allowance, affected entities may submit those reports in an acceptable digital format to CEDRI or process those reports via the ERT and then submit the ERT-generated submission package to CEDRI.

These allowances only apply to the Federal requirements for 40 CFR parts 59, 60, 61, 62, and 63 reports, notifications, or other submission types currently required to be submitted in paper format, and reports associated with 40 CFR part 60 subpart AAA and 40 CFR part 60 subpart QQQQ that are currently emailed to the Agency. Reporting requirements for reports, notifications, or other submission types required to be submitted to the EPA immediately, including, but not limited to, emergency notifications (e.g., the immediate startup, shutdown, and malfunction report required in 40 CFR 63.7545(f)), are not superseded by this notice, and may not utilize this allowance to submit electronically to CEDRI. Other existing or future mandatory electronic reporting requirements (e.g., E-Reporting requirements) promulgated in 40 CFR parts 59, 60, 61, 62, and 63 rules are also not superseded by this notice. This notice also does not supersede any state, local, or tribal reporting requirements.

II. Confidential Business Information (CBI)

The EPA recognizes that the potential for CBI in submissions exists. The CEDRI reporting system is not built to accommodate the submission of CBI. Accordingly, any records submitted to the CEDRI system should either not contain information claimed as confidential, or have any information claimed confidential redacted or otherwise omitted from the document submitted in the system. Any information submitted in the CEDRI system may be made available to the

public without further notice to the submitter.

If you wish to assert a CBI claim for some of the information contained in a document that is submitted through this new reporting option under this notice, you must submit 2 versions of the document to the EPA. The CBI version of the document submitted should be the complete document that contains the information claimed as CBI (i.e., without redaction or omission of CBI). This version should be submitted electronically to the OAQPS CBI office following the procedure outlined in the paragraphs below. The non-CBI version of the document (i.e., the version with redacted or omitted CBI) will be submitted to the CEDRI system.

Clearly and specifically mark all the information that you claim to be CBI. Do not mark an entire document or pages of the document as CBI, unless you believe all text on the document or page is entitled to confidential treatment under the appropriate legal standard. Accordingly, the information that is redacted from the non-CBI document version that is being submitted to CEDRI should correspond to the information that is clearly marked as CBI in the CBI version. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2.

The preferred method for CBI submittal is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services. Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address oaqpscbi@epa.gov and should include clear CBI markings. Performance tests and performance evaluations should be flagged to the attention of the Group Leader, Measurement Policy Group and all other submissions should be flagged to the attention of the industrial sector lead (e.g., attention Coke Oven Sector Lead, attention Glass Manufacturing Sector Lead, etc.). If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqpscbi@epa.gov to request a file transfer link.

If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: U.S. EPA, Attn: OAQPS Document Control Officer, Mail Drop: C404-02, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, NC 27711, Attention: as noted in

preceding paragraph. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer wrapping.

All CBI claims must be asserted at the time of submission. Anything submitted unredacted using CEDRI cannot later be claimed as CBI. Furthermore, under CAA section 114(c), emissions data are not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, any information that meets the definition of emissions data (see 40 CFR 2.301(a)(2)) will not be protected as CBI and will be made publicly available.

III. Definitions

The definitions set forth in this section apply only when used in accordance with this notice.

Acceptable digital formats are file types that are compatible with CEDRI or other EPA electronic document receiving system that the Administrator may designate.

CDX is the EPA's Central Data Exchange, a central point which supplements the EPA reporting systems by performing new and existing functions for receiving legally acceptable data in various formats, including consolidated and integrated data. CDX can be accessed at <https://cdx.epa.gov>.

CEDRI is the Compliance and Emission Data Reporting Interface which supports the electronic submission of performance test reports, notification reports, periodic reports, and Information Collection Requests (ICRs). CEDRI can be accessed via the CDX at <https://cdx.epa.gov>, and more information on the interface can be found at <https://epa.gov/electronic-reporting-air-emissions/cedri>.

CFR is the United States' Code of Federal Regulations, which is the codification of the general and permanent rules published in the **Federal Register** by the departments and agencies of the Federal Government.

CROMERR is the Cross-Media Electronic Reporting Rule, which provides the legal framework for electronic reporting under the EPA's regulatory programs and ensures the enforceability of regulatory information collected electronically by the EPA and the EPA's state, tribal, and local government partners.

Electronic submission of reports, notifications, or other submission types is the submission of a digital version of a paper (or as specified in this notice, an email) report, notification, or other

submission type to an approved EPA electronic document receiving system.

ERT is the EPA's Electronic Reporting Tool, which is a Microsoft Access computer application that creates electronic versions of stationary source sampling test plans and reports of test results for performance tests and performance evaluations.

E-Reporting (or electronic reporting) is a system in which an electronic tool guides the regulated entity through the reporting process often with built-in compliance assistance and data quality checks.

Joseph Goffman,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2024-21893 Filed 9-24-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-XXXX; FR ID 246358]

Information Collection Being Reviewed by the Federal Communications Commission

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 of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 Office of Management and Budget (OMB) 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 OMB control number.

DATES: Written PRA comments should be submitted on or before November 25, 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 Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-XXXX.

Title: Application to Participate in a 5G Fund Auction, FCC Form 184.

Form Number: FCC Form 184.

Type of Review: New collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 300 respondents and 300 responses.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is 47 U.S.C. 154, 254 and 303(r).

Total Annual Burden: 2,100 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission will use the information collected under this information collection to determine whether applicants are qualified to participate in a 5G Fund auction.

In its November 2011 *USF/ICC Transformation Order*, the Commission took numerous steps to comprehensively reform and modernize the universal service program to ensure that robust, affordable fixed and mobile voice and broadband service are available to those in rural, insular, and high cost areas of the country. *Connect America Fund et al.*, Order and Further Notice of Proposed Rulemaking, FCC 11-161 (*USF/ICC Transformation Order*). Among other things, the Commission (1) established a two-phased Mobility Fund to award universal service support for mobile services in a cost-effective manner to no more than one provider per area in areas where a private-sector business case was lacking, (2) directed that universal service support under the Mobility Fund be awarded by competitive bidding, (3) adopted the rules and

framework for Mobility Fund Phase I, and (4) sought comment on the rules and proposed framework for Mobility Fund Phase II. In its February 2017 *Mobility Fund Phase II Report and Order*, the Commission adopted the rules and framework for Mobility Fund Phase II to provide ongoing universal service support over a ten-year term to areas of the country unlikely to receive 4G LTE service absent subsidies, along with the framework for a challenge process to resolve disputes about areas that were found to be presumptively ineligible for support. *Connect America Fund; Universal Service Reform—Mobility Fund II*, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-11. However, in its October 2020 *5G Fund Report and Order*, the Commission established the 5G Fund as a replacement for Mobility Fund Phase II, and adopted the framework and rules for the 5G Fund to award universal service support in two phases through separate reverse auctions to ensure the deployment of high-speed, 5G mobile service in areas unlikely to see such service absent subsidies. *Establishing a 5G Fund for Rural America*, Report and Order, FCC 20-150 (*5G Fund Report and Order*). In the *5G Fund Report and Order*, the Commission, among other things, adopted a two-stage application process for 5G Fund auctions consisting of pre-auction requirements for applicants seeking to participate in a 5G Fund auction and post-auction requirements for winning bidders applying for 5G Fund support. The Commission decided that applicants seeking to participate in a 5G Fund auction would be required to provide both the information required by section 1.21001(b) of the Commission's existing Part 1, Subpart AA universal service competitive bidding rules, 47 CFR 1.21001(b), and the additional application disclosures and certifications specific to the 5G Fund required by section 54.1014(a) of the Commission's rules, 47 CFR 54.1014(a). In its recent *5G Fund Second Report and Order* (FCC 24-89), the Commission adopted an additional requirement that each applicant seeking to participate in the 5G Fund Phase I auction certify in its application that it has read the public notice adopting procedures for the auction and that it has familiarized itself both with the auction procedures and with the requirements, terms, and conditions associated with the receipt of 5G Fund support.

Under this new information collection, the Commission will collect the information, disclosures, and certifications required by sections

1.21001(b) and 54.1014(a) of the Commission's rules from each applicant seeking to participate in a 5G Fund auction, and will use the information, disclosures, and certifications to determine whether an applicant is legally, technically, and financially qualified to participate in a 5G Fund auction. To aid in collecting this information, the Commission has created FCC Form 184, which will be used to provide the information, disclosures, and certifications required by sections 1.21001(b) and 54.1014(a). Commission staff will review the information, disclosures, and certifications collected on FCC Form 184 as part of the pre-auction process, prior to the start of the auction, and determine whether each applicant satisfies the Commission's requirements to participate in an auction for 5G Fund support. Without the information collected on FCC Form 184, the Commission will not be able to determine if an applicant is legally qualified to participate in a 5G Fund auction and has complied with the various applicable regulatory and statutory auction requirements for such participation. This approach provides an appropriate screen to ensure serious participation without being unduly burdensome.

Federal Communications Commission.
Marlene Dortch,
Secretary.

[FR Doc. 2024-21965 Filed 9-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[DA 24-949; FR ID 246811]

Disability Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces the fifth and final meeting of the fifth term of its Disability Advisory Committee (DAC or Committee).

DATES: Friday, October 18, 2024. The meeting will come to order at 9:00 a.m. Eastern Standard Time.

ADDRESSES: The DAC meeting will be held in the Commission Meeting Room at FCC Headquarters, located at 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Molly Burgdorf, Deputy Designated Federal Officer, Federal

Communications Commission, (202) 418-2173, or email: dac@fcc.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The meeting will be webcast with sign language interpreters and open captioning at: www.fcc.gov/live. In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters via livequestions@fcc.gov.

Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: fcc504@fcc.gov or by calling the Consumer and Governmental Affairs Bureau at (202) 418-0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the DAC is expected to (1) discuss reports and recommendations from the working groups on quality Telecommunications Relay Services for individuals with multiple disabilities, online gaming accessibility for individuals who are blind or have low vision, and the use of artificial intelligence to caption live video programming; and (2) address any other topics relevant to the DAC's work.

Federal Communications Commission.

Joshua Mendelsohn,
Acting Chief, Disability Rights Office,
Consumer and Governmental Affairs Bureau.
[FR Doc. 2024-21778 Filed 9-24-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064-NEW]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on a proposed new information collections described below.

DATES: Comments must be submitted on or before November 25, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- **Agency Website:** <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- **Email:** comments@fdic.gov. Include the name and number of the collection in the subject line of the message.
- **Mail:** Manny Cabeza (202-898-3767), Regulatory Counsel, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- **Hand Delivery:** Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202-898-3767, mcabeza@fdic.gov, MB-3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

1. **Title:** 2025 FDIC Survey of Deposit Insurance Awareness.

OMB Number: 3064-NEW.

Form Number: None.

Affected Public: Individual members of the public.

Burden Estimate:

Frequency of Response: Once.

Estimated Number of Respondents: 6,500.

Average Time per Response: 4 minutes.

Estimated Total Annual Burden: 26,000 minutes (434 hours).

General Description of Collection: The FDIC proposes to field a statistical consumer survey to assess awareness of the FDIC and of deposit insurance. Survey results will inform FDIC public awareness, communication, education, outreach and research efforts regarding deposit insurance, and will identify information and awareness gaps in terms of content and demographic segments. Research questions will cover consumers' knowledge of, attitudes towards, and behaviors regarding deposit insurance. The proposed 2025 FDIC Survey of Deposit Insurance Awareness is intended to collect information regarding what consumers

know about deposit insurance and how they learn it, what consumers think about deposit insurance and banking, and how this information shapes financial decisions. The survey will inform research and programmatic efforts to improve consumers' awareness and understanding of deposit insurance, to help fulfill the agency's mission of maintaining stability and public confidence in the nation's financial system.

The survey will assess consumers' awareness and knowledge of the FDIC and its role regarding deposit insurance, including their understanding of the types of institutions and situations where deposit insurance applies, and the sources they use to learn about deposit insurance. The survey will also assess whether deposit insurance impacts consumers' confidence in the banking system and perceptions and use of bank and nonbank financial services, including their likelihood to consider deposit insurance when making decisions about financial products and services. Finally, the survey will collect background information regarding consumers' use of some bank and nonbank products, and the types of institutions they use to save or store money inside and outside of the banking system.

The survey will be conducted in spring 2025 as part of Porter Novelli's PN Styles survey, using the IPSOS Knowledge Panel, a probability-based online panel in the U.S. PN Styles is a large-scale, representative survey of U.S. adults that tracks consumer attitudes and behaviors.

Request for Comment:

Comments are invited on (a) whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, September 19, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-21907 Filed 9-24-24; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (FR YY; OMB No. 7100-0350).

DATES: The revisions are applicable as of September 25, 2024.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, nuha.elmaghrabi@frb.gov, (202) 452-3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395-6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at <https://www.reginfo.gov/public/do/PRAMain>. These documents are also available on the Federal Reserve Board's public website at <https://www.federalreserve.gov/apps/reportingforms/home/review> or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR YY.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Collection identifier: FR YY.

OMB control number: 7100-0350.

General description of collection: Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Board to implement enhanced prudential standards and impose requirements related to stress tests on certain financial companies. The Board has relied on this authority to enact Regulation YY—Enhanced Prudential Standards (12 CFR part 252). The enhanced prudential standards and other requirements contained in Regulation YY include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council has determined pose a grave threat to financial stability. The FR YY information collection includes reporting, recordkeeping, and disclosure requirements contained in Regulation YY.

Frequency: Quarterly, biennial, annual, and event-generated.

Respondents: U.S. bank holding companies, domestic and foreign nonbank systemically important financial institutions, state member banks, foreign banking organizations, and U.S. intermediate holding companies.

Total estimated number of respondents: 43.

Total estimated change in burden: 2,578.

Total estimated annual burden hours: 26,458.

Current actions: On March 29, 2024, the Board published a notice in the **Federal Register** (89 FR 22150) requesting public comment for 60 days on the extension, with revision, of the FR YY. The Board proposed to revise the FR YY to take into account existing provisions in Regulation YY that included information collections, but had not been included in previous clearances. The comment period for this notice expired on May 28, 2024. The Board did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, September 17, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–21910 Filed 9–24–24; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0324; Docket No. 2024–0001; Sequence No.14]

Information Collection; General Services Administration Acquisition Regulation; Foreign Ownership and Financing Representation for High-Security Leased Space

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, GSA invites the public to comment on an extension concerning disclosure of foreign ownership information under high-security lease space acquisitions.

DATES: Submit comments on or before November 25, 2024.

ADDRESSES: Submit comments on this information collection to <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “Information Collection 3090–0324”. Select the link “Comment Now” that corresponds with Information Collection 3090–0324. Follow the instructions provided at the “Comment Now” screen. Please include your name, company name (if any), and “Information Collection 3090–0324” on your attached document.

Instructions: Please submit comments only and cite “Information Collection 3090–0324” in all correspondence related to this collection. Comments received generally will be posted without change to [regulations.gov](https://www.regulations.gov), including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [regulations.gov](https://www.regulations.gov) approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Lara, 816–589–3783, General Services Acquisition Policy Division, by email at gsarpolicy@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this information collection supports the implementation of the Secure Federal LEASEs Act (Pub.

L. 116–276) to reduce security risks in high-security leased space. Section 3 of the bill requires agencies, before entering into a lease agreement for high-security leased space, to require the contractor to identify the immediate or highest-level owner of the space, including any financing entity, and disclose whether that owner is a foreign person or entity, including the country associated with the ownership entity.

This information collection covers GSA’s implementation of the Act through GSAR clause 552.270–33. As this information is still required, GSA seeks to have this information collection extended for three years.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows:

1. Initial Disclosure

Baseline Representation

Estimated annual responses: 542.

Estimated hours per response: 2.

Additional Representation

Estimated annual responses: 54.

Estimated hours per response: 10.

Total Initial Response Burden Hours: 1,624.

2. Annual Updates

Estimated annual responses: 542.

Estimated hours per response: 0.50.

Total Update Response Burden Hours: 271.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–21914 Filed 9–24–24; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Delegation of Authority; Public Health Service Act

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services.

ACTION: Notice.

This notice announces the delegation of authority to the Head of Contracting Activity, Director Office of Acquisition Services, CDC. CDC has delegated the authority under section 305(e) of the Public Health Service Act (42 U.S.C. 242c), as amended, to (1) enter into transactions other than a contract, grant, or cooperative agreement for purposes of infectious disease research, bio-surveillance, infectious disease modeling, and public health preparedness and response for CDC. This includes the authority to award, modify, administer, and terminate other transactions; and (2) with respect to a project that is expected to cost more than \$40,000,000, any delegated or redelegated authority under item (1) above to the Head of the Contracting Activity may only be exercised upon a written determination by the Assistant Secretary for Financial Resources, that the use of such authority is essential to promoting the success of the project. The authority of the Assistant Secretary for Financial Resources under section 305(e)(2) of the Act (42 U.S.C. 242c(e)(2)) as amended, may not be delegated. This authority may be redelegated unless redelegation is otherwise prohibited by law, regulation, other delegation, or policy.

DATES: This delegation was approved by the Director of CDC and became effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Samantha Harrykissoon, Office of Policy, Performance, and Communication, Office of Financial Resources, Centers for Disease Control and Prevention, 4770 Buford Hwy., MS S102–1, Atlanta, GA 30341. Telephone 770–488–2514; Email: ofrpolicy@cdc.gov.

Robin D. Bailey,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–21788 Filed 9–24–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–E–3228; FDA–2023–E–3229; and FDA–2023–E–3230]

Determination of Regulatory Review Period for Purposes of Patent Extension; OMLONTI

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OMLONTI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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 Nos. FDA–2023–E–3228; FDA–2023–E–3229; FDA–2023–E–3230 for “Determination of Regulatory Review Period for Purposes of Patent Extension; OMLONTI.” 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the

actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, OMLONTI (omidopap isopropyl ophthalmic solution) indicated for the reduction of elevated intraocular pressure in patients with open-angle glaucoma or ocular hypertension. Subsequent to this approval, the USPTO received a patent term restoration application for OMLONTI (U.S. Patent No. 8,648,097; 8,685,986; 10,702,511) from Santen Pharmaceutical Co., Ltd. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OMLONTI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OMLONTI is 3,723 days. Of this time, 3,050 days occurred during the testing phase of the regulatory review period, while 673 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 15, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 15, 2012.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* November 19, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for OMLONTI (NDA 215092) was initially submitted on November 19, 2020.

3. *The date the application was approved:* September 22, 2022. FDA has verified the applicant's claim that NDA 215092 was approved on September 22, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension.

In its applications for patent extension, this applicant seeks 623 days or 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 19, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21847 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–0428, FDA–2024–E–0429, FDA–2024–E–0430, and FDA–2024–E–0431]

Determination of Regulatory Review Period for Purposes of Patent Extension; FRUZAQLA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for FRUZAQLA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and

Trademark Office (USPTO), Department of Commerce, for the extension of patents which claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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

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- **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 Nos. FDA-2024-E-0428, FDA-2024-E-0429, FDA-2024-E-0430, and FDA-2024-E-0431 for “Determination of Regulatory Review Period for Purposes of Patent Extension; FRUZAQLA.” 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 § 10.20 (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:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product FRUZAQLA (fruquintinib). FRUZAQLA is indicated for the treatment of adult patients with metastatic colorectal cancer who have been previously treated with fluoropyrimidine-, oxaliplatin-, and irinotecan-based chemotherapy, an anti-vascular endothelial growth factor therapy, and if RAS wild-type and medically appropriate, an anti-epidermal growth factor receptor therapy. Subsequent to this approval,

the USPTO received patent term restoration applications for FRUZAQLA (U.S. Patent Nos. 7,829,574; 8,212,033; 10,519,142; and 11,046,674) from HUTCHMED LTD., and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated April 17, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of FRUZAQLA represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for FRUZAQLA is 2,604 days. Of this time, 2,380 days occurred during the testing phase of the regulatory review period, while 224 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 23, 2016. FDA has verified the applicant’s claims that the date the investigational new drug application became effective was on September 23, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 30, 2023. FDA has verified the applicant’s claim that the new drug application (NDA) for FRUZAQLA (NDA 217564) was initially submitted on March 30, 2023.

3. *The date the application was approved:* November 8, 2023. FDA has verified the applicant’s claim that NDA 217564 was approved on November 8, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 544 days, 793 days, or 1,414 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for

extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21930 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–3237]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZAVZPRET

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ZAVZPRET and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by

March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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

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- 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–2023–E–3237 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ZAVZPRET.” 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic

Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ZAVZPRET (zavegepant hydrochloride) indicated for the acute treatment of migraine with or without aura in adults. Subsequent to this approval, the USPTO received a patent term restoration application for ZAVZPRET (U.S. Patent No. 8,481,546) from Pfizer Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ZAVZPRET represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZAVZPRET is 1,619 days. Of this time, 1,253 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* October 4, 2018. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 4, 2018.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 9, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for ZAVZPRET (NDA 216386) was initially submitted on March 9, 2022.

3. *The date the application was approved:* March 9, 2023. FDA has verified the applicant's claim that NDA 216386 was approved on March 9, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 993 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21963 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–3266]

Determination of Regulatory Review Period for Purposes of Patent Extension; JESDUVROQ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for JESDUVROQ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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-2023-E-3266 for "Determination of Regulatory Review Period for Purposes of Patent Extension; JESDUVROQ." 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 § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an

application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, JESDUVROQ (daprodustat). JESDUVROQ is indicated for the treatment of anemia due to chronic kidney disease in adults who have been receiving dialysis for at least 4 months. Subsequent to this approval, the USPTO received a patent term restoration application for JESDUVROQ (U.S. Patent No. 8,324,208) from GlaxoSmithKline LLC, and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of JESDUVROQ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for JESDUVROQ is 5,328 days. Of this time, 4,962 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 3, 2008. The applicant claims June 30, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 3, 2008, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* February 1, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for JESDUVROQ (NDA 216951) was initially submitted on February 1, 2022.

3. *The date the application was approved:* February 1, 2023. FDA has verified the applicant's claim that NDA 216951 was approved on February 1, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2,038 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 19, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21848 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–E–0132]

Determination of Regulatory Review Period for Purposes of Patent Extension; DAYBUE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for DAYBUE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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–E–0132 for “Determination of Regulatory Review Period for Purposes of Patent Extension; DAYBUE.” 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 § 10.20 (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.regulations.gov>

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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, DAYBUE (trofinetide). DAYBUE is indicated for the treatment of Rett syndrome in adults and pediatric patients 2 years of age and

older. Subsequent to this approval, the USPTO received a patent term restoration application for DAYBUE (U.S. Patent No. 9,212,204) from Acadia Pharmaceuticals Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 24, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of DAYBUE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for DAYBUE is 5,106 days. Of this time, 4,864 days occurred during the testing phase of the regulatory review period, while 242 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* March 19, 2009. The applicant claims December 20, 2012, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 19, 2009, which was 30 days after FDA receipt of an earlier IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 12, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for DAYBUE (NDA 217026) was initially submitted on July 12, 2022.

3. *The date the application was approved:* March 10, 2023. FDA has verified the applicant's claim that NDA 217026 was approved on March 10, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,443 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21

CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-21941 Filed 9-24-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-2381]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by October 25, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or

by using the search function. The OMB control number for this information collection is 0910–0432. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Recall Authority

OMB Control Number 0910–0432—Extension

This collection of information helps to implement section 518(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360h(e)) and regulations in part 810 (21 CFR part

810) which set forth mandatory medical device recall authority provisions. Section 518(e) of the FD&C Act provides FDA with the authority to issue an order requiring an appropriate person, including manufacturers, importers, distributors, and retailers of a device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious, adverse health consequences or death, to: (1) Immediately cease distribution of such device and (2) immediately notify health professionals and device-user facilities of the order and to instruct such professionals and facilities to cease use of such device.

The person named in the order will have an opportunity for a regulatory hearing or to provide a written request to FDA asking that the order be modified, vacated, or amended. FDA may later amend the order to require a mandatory recall of the device. FDA currently allows for these requests, along with other reports and records concerning mandatory recalls, to be submitted to the Agency using

electronic methods including email and FDA's eSubmitter program (<https://www.fda.gov/industry/fda-esubmitter>).

FDA issued part 810 to implement the provisions of section 518 of the FD&C Act. The information collected under the mandatory recall authority provisions is used by FDA to implement mandatory recalls.

Description of Respondents:

Respondents for this collection of information are firms, including medical device manufacturers, importers, distributors, and retailers, that have been issued a cease distribution and notification order or mandatory recall order in accordance with the provisions under part 810, during the timeframe(s) specified in the order.

In the **Federal Register** of June 5, 2024 (89 FR 48174), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Collection activity—21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of information to FDA about device distribution and remedial actions to be taken, as specified in the order—810.10(d)	2	1	2	8	16
Submission of a written request for regulatory hearing—810.11(a)	1	1	1	8	8
Submission of a written request to FDA asking that the order be modified or vacated—810.12(a–b)	1	1	1	8	8
Submission of a strategy for compliance with cease distribution and notification or mandatory recall order—810.14	2	1	2	16	32
Submission of periodic status reports to FDA to enable the Agency to assess progress in compliance with the order—810.16(a–b)	2	12	24	40	960
Submission of a written request to FDA to certify compliance with and terminate the order—810.17(a)	2	1	2	8	16
Total Hours					1,040

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Collection activity—21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Documentation of communications to appropriate person(s)—810.15(b)	2	1	2	8	16

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

Collection activity—21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual responses	Average burden per disclosure	Total hours
Communications to appropriate person(s) concerning a cease distribution and notification or mandatory recall order—810.15(a)–(c)	2	1	2	12	24
Follow up communications to appropriate person(s) who fail to respond to the initial communication—810.15(d)	2	1	2	4	8

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN¹—Continued

Collection activity—21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual responses	Average burden per disclosure	Total hours
Notifications provided by recipients of communications to appropriate consignees—810.15(e)	10	1	10	1	10
Total					42

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden per response, burden per recordkeeping, and burden per disclosure estimates are based on FDA's recent experience with voluntary recalls under 21 CFR part 7. Based on an analysis of cease distribution and notification and mandatory recall order activity over the last 3 years, FDA expects no more than two of such actions per year as a conservative estimate.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: September 19, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21904 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–2829]

Determination of Regulatory Review Period for Purposes of Patent Extension; ELUCIREM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ELUCIREM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 25, 2024.

Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 24, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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–2023–E–2829 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ELUCIREM.” 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 § 10.20 (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:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all

of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ELUCIREM (gadopiclenol) indicated in adult and pediatric patients aged 2 years and older for use with magnetic resonance imaging to detect and visualize lesions with abnormal vascularity in: the central nervous system (brain, spine, and associated tissues), the body (head and neck, thorax, abdomen, pelvis and musculoskeletal system). Subsequent to this approval, the USPTO received a patent term restoration application for ELUCIREM (U.S. Patent No. 8,114,863) from Guerbet LLC and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated October 19, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ELUCIREM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ELUCIREM is 2,443 days. Of this time, 2,199 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 15, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 15, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* January 21, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for ELUCIREM (NDA 216986) was initially submitted on January 21, 2022.

3. *The date the application was approved:* September 21, 2022. FDA has verified the applicant's claim that NDA 216986 was approved on September 21, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension,

this applicant seeks 1,344 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-21929 Filed 9-24-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-4392]

Live Biotherapeutic Products To Prevent Necrotizing Enterocolitis in Very Low Birth Weight Infants; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency), the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), the National Institute of Allergy and Infectious Diseases (NIAID), and the Eunice Kennedy Shriver National Institute of Child Health and Human Development (NICHD) (collectively, we) are

announcing a public workshop entitled “Live Biotherapeutic Products to Prevent Necrotizing Enterocolitis in Very Low Birth Weight Infants.” The purpose of the public workshop is to exchange information with the medical and scientific community about the regulatory and scientific issues associated with use of live biotherapeutic products to prevent necrotizing enterocolitis (NEC) in very low birth weight (VLBW) infants.

DATES: The public workshop will be held on October 25, 2024, from 9 a.m. to 4 p.m. Eastern Time. Either electronic or written comments on this public workshop must be submitted by November 25, 2024. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the NIH, National Institute of Allergy and Infectious Diseases Building, 5601 Fishers Lane, Rockville, MD 20892. Entrance for public workshop participants (non-NIH employees) is through the NIAID Building front lobby entrance where routine security check procedures will be performed. For parking and security information, please refer to <https://www.niaid.nih.gov/about/visitor-information>.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 25, 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-4392 for “Live Biotherapeutic Products to Prevent Necrotizing Enterocolitis in Very Low Birth Weight Infants.” 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:

Ryan Ranallo, National Institute of Allergy and Infectious Diseases, Division of Microbiology and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20852, 240-479-1958, ryan.ranallo@nih.gov; or Peter Weina, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 202-740-8687.

SUPPLEMENTARY INFORMATION:

I. Background

Necrotizing enterocolitis (NEC) in very low birth weight infants (VLBW) remains a significant public health problem. FDA has not approved any products, including live biotherapeutic products, for the prevention of NEC. Various products marketed as probiotics have been used in efforts to prevent this serious and life-threatening outcome; however, substantial evidence of effectiveness has not been demonstrated and serious adverse outcomes, including death, have been reported following use of probiotics in preterm infants.

II. Topics for Discussion at the Public Workshop

This public workshop is convened to: (1) advance a shared understanding of the epidemiology of NEC; (2) review current feeding practices; (3) discuss limitations of NEC case definitions; (4) review dynamics of the microbiome and NEC pathogenesis; (5) discuss the state of the evidence for probiotic use to prevent NEC; (6) review safety signals with probiotics; (7) explore clinical trial considerations; and (8) discuss challenges and opportunities in advancing development of Live Biotherapeutic Products as safe and effective products for the prevention of NEC in VLBW infants.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website for registration information: <https://cvent.me/9NerMP>. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop in-person must register by October 11, 2024, 11:59 p.m. Eastern Time. Early registration is recommended because in-person seating is limited; therefore, we may limit the number of participants from each organization.

If you need special accommodations due to a disability, please contact Ms. Christina McCormick, christina.mccormick@nih.gov, no later than October 15, 2024.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during a public comment session and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the public comment session. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin and will select and notify participants by October 18, 2024. All requests to make oral presentations must be received by the close of registration on October 11, 2024, at 11:59 p.m. Eastern Time. If selected for presentation, any presentation materials must be emailed to Ryan Ranallo (ryan.ranallo@nih.gov) no later than October 22, 2024. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast on <https://videocast.nih.gov/>.

Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

Recording: Please be advised that as soon as possible after a recording of the public workshop is available, it will be accessible at <https://videocast.nih.gov/>

PastEvents and available until October 25, 2025.

Notice of this meeting is given pursuant to 21 CFR 10.65.

Dated: September 20, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–21928 Filed 9–24–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can also be accessed at the following NIH Videocast URL link <https://videocast.nih.gov>.

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 Advisory Council for Complementary and Integrative Health.

Date: January 24, 2025.

Closed: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, DEM 2, 6707 Democracy Boulevard, Bethesda, MD 20892, Virtual Meeting.

Open: 12:30 p.m. to 4:00 p.m.

Agenda: Reports and Updates about Recent and Ongoing NCCIH Led or Involved Activities by NCCIH staff and its Director.

Place: National Institutes of Health, DEM 2, 6707 Democracy Boulevard, Bethesda, MD 20892, Virtual Meeting.

Contact Person: Martina Schmidt, Ph.D., Director, Division of Extramural Activities, National Center for Complementary & Integrative Health, NIH, 6707 Democracy

Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, schmidma@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should be less than 700 words in length, and should include the name, email address, telephone number and when applicable, the business or professional affiliation of the interested person. *Any member of the public may submit written comments no later than January 10th, 2024 (14 days before the council meeting).*

Information is also available on the Institute's/Center's home page: <https://nccih.nih.gov/about/naccih>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: September 19, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21858 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse Special Emphasis Panel; NIDA–K Alternate SEP.

Date: November 4, 2024.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435–1258, marisa.srivareerat@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Avenir Award Program for Chemistry and Pharmacology of Substance Use Disorders.
Date: January 8, 2025.
Time: 10:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marisa Srivareerat, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 435-1258, marisa.srivareerat@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 20, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21958 Filed 9-24-24; 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: Digestive, Kidney and Urological Systems Integrated Review Group; Environmental Determinants of Disease Study Section.

Date: October 21–23, 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: Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867-5309, stacey.williams@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Immune Mechanisms of Hypersensitivity and Allergy (IMHA).

Date: October 22–23, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place National Harbor, 123 Waterfront St, National Harbor, MD 20745.

Meeting Format: In Person.

Contact Person: Deanna C. Bublit, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-4005, deanna.bublit@nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: October 22–23, 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: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496-9392, chana2@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Maximizing Investigators' Research Award C Study Section.

Date: October 22–23, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817.

Meeting Format: Virtual Meeting.

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402-8559, jimok.kim@nih.gov.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Therapeutic Development and Preclinical Studies Study Section.

Date: October 23–24, 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.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Richard D Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301-402-3995, richard.schneiderman@nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neuroscience of Basic Visual Processes Study Section.

Date: October 23–24, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: EVEN Hotel Rockville, Previously Holiday Inn, 1775 Rockville Pike Rockville, MD 20852.

Meeting Format: In Person.

Contact Person: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301-435-1242, kgt@mail.nih.gov.

Name of Committee: Social and Community Influences on Health Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: October 23–24, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Meeting Format: In Person.

Contact Person: Maria De Jesus Diaz Perez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000G, Bethesda, MD 20892, (301) 496-4227, diazperez2@csr.nih.gov.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Healthcare and Health Disparities Study Section.

Date: October 23–24, 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: Tara Roshell Earl, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007C, Bethesda, MD 20892, (301) 402-6857, earltr@mail.nih.gov.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Developmental Brain Disorders Study Section.

Date: October 23–25, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, (301) 408-9866, manospa@csr.nih.gov.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated

Review Group; Advancing Therapeutics—B Study Section.

Date: October 24–25, 2024.

Time: 9:30 a.m. to 7:00 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: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–402–4809, lystranne.maynard-smith@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 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21898 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel; Advancing Genomic Medicine Research.

Date: October 29, 2024.

Time: 10:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Lori Bonnycastle, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, 301–594–9206, lbonnycastle@mail.nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Regional Genomic Medicine eConsult Services.

Date: November 13, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Sarah J. Wheelan, MD, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–8823, wheelansj@nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Training Grant.

Date: November 14, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (301) 402–0838, pozziattr@mail.nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Computational Genomics and Data Science Education.

Date: November 18, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Sarah J. Wheelan, MD, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 402–8823, wheelansj@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21900 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; URGENT: Translational Efforts to Advance Gene-based Therapies for Ultra-Rare Neurological and Neuromuscular Disorders.

Date: October 17, 2024.

Time: 10:00 a.m. to 2:00 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: Mirela Milesescu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, mirela.milesescu@nih.gov, 301–496–5720.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: September 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21901 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: November 4, 2024.

Time: 10:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20892, 240-669-5026, haririmf@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21860 Filed 9-24-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Device Based Treatments for Substance Use Disorders.

Date: October 30, 2024.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443-4577, nayarp2@csr.nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Analytical Service Center for Medications Development Program.

Date: October 30, 2024.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827-5843, trinh.tran@nih.gov.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Developing Regulated Therapeutic and Diagnostic Solutions for Patients Affected by Opioid and/or Stimulants Use Disorders.

Date: November 7-8, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sudhirkumar U. Yanpallewar, M.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 443-4577, sudhirkumar.yanpallewar@nih.gov.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Medication Development Research Study Section.

Date: November 13, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North

Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, 301-443-4577, nayarp2@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21859 Filed 9-24-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 18, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, RML 31/3118, Hamilton, MT 59840 (Video Assisted Meeting).

Contact Person: Kristin L. McNally, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, RML 31/3118, Hamilton, MT 59840, mcnallyk@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21863 Filed 9-24-24; 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: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: October 17, 2024.

Time: 3:00 p.m. to 7:00 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: Benjamin G. Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402-4786, shaperobg@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Understanding mechanisms underlying aging and neurodegeneration.

Date: October 23, 2024.

Time: 9:30 a.m. to 5:30 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: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181,

MSC 7846, Bethesda, MD 20892-7846, (301) 827-7238, zhaow@csr.nih.gov.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Integrative Myocardial Physiology/Pathophysiology B Study Section.

Date: October 23-24, 2024.

Time: 10:00 a.m. to 7:00 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: Kirk E. Dineley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 806E, Bethesda, MD 20892, (301) 867-5309, dineleyke@csr.nih.gov.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Translational Imaging Science Study Section.

Date: October 24-25, 2024.

Time: 8:00 a.m. to 8:00 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.

Meeting Format: In Person.

Contact Person: Eleni Apostolos Liapi, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867-5309, eleni.liapi@nih.gov.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Digestive and Nutrient Physiology and Diseases Study Section.

Date: October 24-25, 2024.

Time: 8:30 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: Aster Juan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 435-5000, juana2@mail.nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: October 24-25, 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: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435-1256, biesj@mail.nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Molecular and Cellular Biology of Virus Infection Study Section.

Date: October 24-25, 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: Syed Mohammad Moin, Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-7593, syed.moin@nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Reproductive, Perinatal and Pediatric Health Study Section.

Date: October 24-25, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Meeting Format: In Person.

Contact Person: Cynthia Chioma McOliver, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594-2081, mcolivercc@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: October 24-25, 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: In Person and Virtual Meeting.

Contact Person: Tami Jo Kingsbury, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 710Q, Bethesda, MD 20892, (410) 274-1352, tami.kingsbury@nih.gov.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Immunity and Host Defense Study Section.

Date: October 24-25, 2024.

Time: 9:30 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.

Meeting Format: Virtual Meeting.

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435-3566, mulky@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 19, 2024.

David W. Freeman,

*Supervisory Program Analyst, Office of
Federal Advisory Committee Policy.*

[FR Doc. 2024–21897 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: October 25, 2024.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Anuja Mathew, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G58, Rockville, MD 20892, 301–761–6911, anuja.mathew@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–21862 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Initial Review Group; Genome Research Study Section.

Date: November 12, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, 301–594–4280, mckenneyk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 19, 2024.

David W. Freeman,

*Supervisory Program Analyst, Office of
Federal Advisory Committee Policy.*

[FR Doc. 2024–21902 Filed 9–24–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel; GREAT.

Date: November 21, 2024.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Lori Bonnycastle, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, 301–594–9206, lbonnyc@mail.nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Tools to Advance Genomic Translational Research (MAGen).

Date: November 22, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Sarah J. Wheelan, MD, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (301) 402–8823, wheelansj@nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Research in Genomics and Health Equity.

Date: November 22, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (301) 402–0838, pozzattr@mail.nih.gov.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; CEGS.

Date: November 25–26, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892 (Virtual).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human

Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20892, (301) 594-4280, mckenneyk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21899 Filed 9-24-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Strategies for Controlled Release of HIV Vaccines (SCORE-H) (R01 Clinical Trial Not Allowed).

Date: October 28, 2024.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Barry J. Margulies, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20852, (301) 761-7956, barry.margulies@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 20, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21957 Filed 9-24-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; NCI Program Project (P01) Review SEP-F.

Date: October 21, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute at Shady Grove, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850 (Virtual Meeting).

Contact Person: Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W126, Rockville, Maryland 20850, 240-276-6611, mukesh.kumar3@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 19, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-21894 Filed 9-24-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651-0008]

Agency Information Collection Activities; Extension; Application for Identification Card (CBP Form 3078)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0008 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This process is conducted in accordance with 5 CFR 1320.8. Written

comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Identification Card.

OMB Number: 1651–0008.

Form Number: 3078.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 3078, *Application for Identification Card*, is completed for the purpose of collecting an applicant's information to conduct a meaningful background investigation to determine whether the applicant meets the criteria to obtain an Identification Card that is used to gain access to CBP Customs Security Areas (CSA). This form collects biographical information and is usually completed by airport employees, CBP Security Area Identification, Warehouse Officer or Employee, Container Station Employee, Foreign Trade Zone Employee, CES Employee, licensed Cartmen or Lightermen whose duties require receiving, transporting, or otherwise handling imported merchandise which has not been released from CBP custody. This form may be submitted electronically or to the local CBP office at the port of entry that the respondent will be requesting access to the Federal Inspection Section (FIS). Form 3078 is authorized by 19 U.S.C. 66, 1551, 1555, 1565, 1624, 1641;

and 19 CFR 112.41, 112.42, 118, 122.182, and 146.6. This form is accessible at: <https://www.cbp.gov/newsroom/publications/forms?title=3078&=Apply>.

Type of Information Collection: Form 3078.

Estimated Number of Respondents: 200,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 17 minutes.

Estimated Total Annual Burden Hours: 56,667.

Dated: September 20, 2024.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–21927 Filed 9–24–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0036]

Agency Information Collection Activities; Extension; Declaration of the Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than November 25, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0036 in the subject line and the agency name. Please submit written comments and/or suggestions in English. Please use the following method to submit comments:

Email. Submit comments to: CBP_PRA@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The Declaration of the Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes is used to document duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes. This declaration is provided for under 19 U.S.C. 1202, HTSUS Subheading 9801.00.40, and 19 CFR 10.67(a)(3) which requires a declaration from the ultimate consignee stating that the articles were sent from the United States solely for temporary scientific or educational use and for no other use abroad than for exhibition, examination, or experimentation; and that the articles are being returned without having been changed in condition in any manner, except by reason of their bona fide use as described in the declaration. This declaration is submitted to CBP by the importer or the agent of the importer and is used by CBP to determine whether the imported articles should be free of duty.

Type of Information Collection: Declaration that Articles were Exported for Temporary Scientific or Educational Purposes.

Estimated Number of Respondents: 55.

Estimated Number of Annual

Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 165.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 27.

Dated: September 20, 2024.

Seth D Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024-21937 Filed 9-24-24; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Revision From OMB of One Current Public Collection of Information: TSA Claims Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR),

Office of Management and Budget (OMB) control number 1652-0039, that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of information from claimants in order to thoroughly examine and resolve tort claims against the agency.

DATES: Send your comments by November 25, 2024.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology (IT), TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

- (1) Evaluate whether the proposed information requirement 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;
- (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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652-0039; TSA Claims Application allows the agency to collect information from claimants in order to thoroughly examine and resolve tort claims against the agency. TSA receives approximately 625 tort claims per month arising from airport screening activities and other circumstances, including motor vehicle accidents and employee loss. The

Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671-2680) is the authority under which the TSA Claims, Outreach, and Debt Branch adjudicates tort claims.

TSA collects the data whenever an individual believes s/he has experienced property loss or damage, a personal injury, or other damages due to the negligent or wrongful act or omission of a TSA employee while acting within the scope of their duties, and the individual decides to file a Federal tort claim against TSA. Submission of a claim is entirely voluntary and initiated by individuals. The claimants (or respondents) to this collection are typically the traveling public. Currently, claimants file a claim by submitting to TSA a Standard Form 95 (SF-95), which has been approved under OMB control number 1105-0008. Because TSA requires further clarifying information, claimants are asked to complete a Supplemental Information page added to the SF-95.

TSA is revising the collection to include TSA Form 600, *Authorization for Disclosure of Protected Health Information Pursuant to the Health Insurance Portability and Accountability Act (HIPAA)*. If TSA requires information protected by HIPAA in order to fully adjudicate a claim, claimants are asked to complete TSA Form 600 to provide TSA with the claimant's: (1) name, (2) date of birth, (3) social security number, (4) address, (5) a description of the information to be disclosed, and (6) signature. TSA Form 600 permits TSA to investigate and evaluate administrative claims under the Federal Tort Claims Act and to engage with the claimants' health providers. If TSA determines payment is warranted, TSA will send the claimant a form requesting (1) claimant signature, (2) banking information, and (3) Social Security number (required by the U.S. Treasury for all Government payments to the public pursuant to 31 U.S.C. 3325) in order to make direct payment to the claimant.

Claim instructions and forms are available through the TSA website at <https://www.tsa.gov>. Claimants must download these forms and mail or fax them to TSA. On the Supplemental Information page, claimants are asked to provide additional claim information including: (1) email address, (2) airport, (3) location of incident within the airport, (4) complete travel itinerary, (5) whether baggage was delayed by the airline, (6) why they believe TSA was negligent, (7) whether they used a third-party baggage service, (8) whether they were traveling under military orders,

and (9) whether they submitted claims with the airline or insurance companies.

Under the current system of claims submitted by mail or fax, TSA estimates there will be approximately 7500 respondents on an annual basis, for a total annual hour burden of 3,900 hours.

Dated: September 19, 2024.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024-21883 Filed 9-24-24; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24GC009PLFM00]

Call for Nominations for the Geologic Mapping Advisory Committee

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Call for nominations.

SUMMARY: The U.S. Department of the Interior (Department) is seeking nominations for qualified persons to serve as members of the Geologic Mapping Advisory Committee (Committee).

DATES: Nominations for the Committee must be submitted by November 12, 2024.

ADDRESSES: Nominations should be emailed to Michael Marketti, Designated Federal Officer, at mmarketti@usgs.gov with the subject line "Geologic Mapping Advisory Committee Nominations."

FOR FURTHER INFORMATION CONTACT: Michael Marketti, via telephone (703) 648-6976, or by email mmarketti@usgs.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: The Committee was established by the National Geologic Mapping Act of 1992, as amended (43 U.S.C. 31d), and the Energy Policy Act of 2005, as amended (42 U.S.C. 15908). The Committee is operated pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. ch. 10), and the Federal Advisory Committee Management regulations found at 41 CFR part 102-3. The Committee will advise the Secretary on planning and implementation of the

National Cooperative Geologic Mapping Program (NCGMP) and National Geological and Geophysical Data Preservation Program (NGGDPP).

Committee duties in relation to the NCGMP, include: reviewing the ongoing scientific progress of the NCGMP; conducting a general overview of Program-funded geologic mapping and related activities that inform or are disseminated by Federal agencies for regulation or land-use planning; and working collaboratively to develop a report to the Secretary, through the Director, that provides an overview of Program activities and provides an update on progress made toward fulfilling the purposes of the National Geologic Mapping Act of 1992.

Committee duties in relation to the NGGDPP include: reviewing the progress of the NGGDPP in providing discovery and access to significant State and Federal data and physical object holdings; recommending and facilitating collaborative relationships; soliciting and providing input on NGGDPP activities; and evaluating, via the annual report to the Secretary, through the Director, the progress of the NGGDPP toward fulfilling its purposes under the National Geological and Geophysical Data Preservation Program Act of 2005.

The Committee will meet approximately once annually, and at such times as designated by the Designated Federal Officer. The Committee is composed of 11 members appointed by the Secretary as follows:

1. Two members from the State geological surveys to represent the Association of American State Geologists;
2. Two members from the U.S. Geological Survey, including the Associate Director for Core Science Systems Mission Area;
3. Two members from the private sector to represent the geoscience industry; and
4. One member from academia to represent university geoscience departments.

5. In addition, the Committee will have non-voting ex-officio members to include: Administrator of the Environmental Protection Agency or designee; Secretary of Energy or designee; Secretary of Agriculture or designee; and Secretary of the Interior or a designee from a land management agency of the Department of the Interior.

Representative members will be appointed for staggered terms not to exceed 3-years.

Nominations must include a resume providing an adequate description of the nominee's qualifications, including information that would enable the

Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department to contact a potential member. All those interested in membership must follow the same nomination process.

Members who are appointed to the Committee in their official capacity as Federal employees are subject to applicable Federal ethics statutes and regulations, to include applicable exceptions and exemptions.

Non-Federal members of the Committee and subcommittees appointed as representatives are not subject to Federal ethics statutes and regulations.

However, no non-Federal Committee or subcommittee members will participate in any Committee or subcommittee deliberations or votes relating to a specific party matter before the Department or its bureaus and offices including a lease, license, permit, contract, grant, claim, agreement, or litigation in which the member or the entity the member represents has a direct financial interest.

Members serve without compensation. However, while away from their homes or regular places of business in the performance of services for the Committee, as approved by the Designated Federal Officer, members may be allowed travel expenses, including per diem in lieu of subsistence.

Authority: 5 U.S.C. ch. 10.

Michael Marketti,

*Administrative Program Manager, NCGMP,
Core Science Systems Mission Area.*

[FR Doc. 2024-21964 Filed 9-24-24; 8:45 am]

BILLING CODE 4338-11-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[24XD4523WS/DWSN00000.000000/
DS61500000/DP.61501]

Notice of Public Meeting of the Invasive Species Advisory Committee

AGENCY: National Invasive Species Council, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that a meeting of the Invasive Species Advisory Committee (ISAC) will meet as indicated below.

DATES: The Invasive Species Advisory Committee will convene in-person on Monday, October 21, 2024, 8:00 a.m.–

5:00 p.m. (HST); Tuesday, October 22, 2024, 8:00 a.m.–11:00 a.m. (HST); and, Wednesday, October 23, 2024, 8:00 a.m.–5:00 p.m. (HST). The general session proceedings will also be streamed virtually via Zoom webinar. Registration is required for all in-person attendees and virtual participants at: <https://forms.office.com/g/VmCNxLGn5A>. *Note:* Virtual access to the general session portions of the meeting will be in “listen only” mode.

ADDRESSES: October 21–22, 2024: Queen Kapi’olani Hotel, 150 Kapahulu Avenue, Honolulu, HI 96815. October 23, 2024: Hyatt Place Waikiki Beach, 175 Paoakalani Ave., Honolulu, HI 96815.

FOR FURTHER INFORMATION CONTACT: For information concerning attending the ISAC meeting, submitting written comments to the ISAC, or requesting to address the ISAC, contact Kelsey Brantley, NISC Operations Director and ISAC Coordinator, National Invasive Species Council Staff, telephone (202) 577-7012; fax: (202) 208-4118, or email kelsey_brantley@ios.doi.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: The purpose of the ISAC is to provide advice to the NISC, as authorized by Executive Orders 13112 and 13751, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. NISC is co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of NISC is to provide national leadership regarding invasive species issues.

The purpose of the in-person meeting on Monday, October 21, 2024, through Wednesday, October 23, 2024, is to convene the full ISAC to finalize and formally approve deliverables developed by its subcommittees on two (2) topics requested by NISC: (1) the impacts of invasive species on islands; and (2) feedback on the National Early Detection and Rapid Response (EDRR) Framework. The committee will also participate in a field trip to He’eia State Park, visiting with local organizations including Kāko’o Ōiwi and Paepae o He’eia to observe on-the-ground efforts

in wetland restoration and invasive species management.

Meeting Agenda: The meeting agenda will consist of an opening session with remarks from state and local leadership, updates from NISC member agencies, an island issues forum, discussion of outputs by the two subcommittees, and consideration of lessons learned and future issues for ISAC consideration. Opportunities for public comment will be provided at the end of the meeting day on Monday and Wednesday.

The final agenda and other reference documents for discussion during the meeting will be available for public viewing as they become available, but no later than 48 hours prior to the start of the meeting at <https://www.invasivespecies.gov>.

Meeting Registration: All meeting participants and interested members of the public must register at <https://forms.office.com/g/VmCNxLGn5A> to attend the meeting in-person or observe the general session virtually. Due to the limited capacity at the meeting venue, and limited connections available for virtual observation, individuals must register no later than Friday, October 18, 2024; 3:00 p.m. (ET).

Meeting Accessibility/Special Accommodations: The meeting is open to the public. Registration is required (see *Meeting Registration* above). Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. Please contact Kelsey Brantley at kelsey_brantley@ios.doi.gov, at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Comment: Interested members of the public may provide either oral or written comments to ISAC for consideration. Oral comments may be given during designated times as specified in the meeting agenda. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Written comments must be submitted by email to Kelsey Brantley at kelsey_brantley@ios.doi.gov, no later than Friday, October 18, 2024; 3:00 p.m. (ET). All written comments will be provided to members of the ISAC. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to Kelsey Brantley at [\[brantley@ios.doi.gov\]\(mailto:brantley@ios.doi.gov\), up to 30 days following the meeting.](mailto:kelsey_</p>
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All comments will be made part of the public record and will be electronically distributed to all ISAC members. The detailed meeting minutes will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be made publicly available. 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.

Authority: 5 U.S.C. ch. 10.

Stanley W. Burgiel,

Executive Director, National Invasive Species Council.

[FR Doc. 2024–21865 Filed 9–24–24; 8:45 am]

BILLING CODE 4334–63–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1353]

Certain Pick-Up Truck Folding Bed Cover Systems and Components Thereof (III); Notice of a Commission Final Determination of Violation of Section 337; Issuance of a General Exclusion Order and Two Cease and Desist Orders; Termination of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has previously determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has issued a general exclusion order (“GEO”) barring entry of certain pick-up truck folding bed cover systems and components thereof that infringe certain claims of two patents asserted in this investigation, and cease and desist orders (“CDOs”) against RDJ Trucks, LLC and Trek Power, Inc. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)

708–5468. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 27, 2023, based on a complaint, as supplemented and amended, filed by Extang Corporation of Ann Arbor, Michigan (“Extang”); Laurmark Enterprises, Inc. d/b/a BAK Industries (“BAK”) of Ann Arbor, Michigan; and UnderCover, Inc. of Rogersville, Missouri (together, “Complainants”). 88 FR 12422–23 (Feb. 27, 2023). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pick-up truck folding bed cover systems and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,188,888; 7,484,788 (“the ‘788 patent’”); 8,061,758 (“the ‘758 patent’”); 7,537,264; 8,182,021; 8,690,224; and 9,815,358. *Id.* at 12422. The Commission's notice of investigation named 21 respondents: 4 Wheel Parts of Compton, California; American Trucks of Lenexa, Kansas; Auto Dynasty a/k/a Shun Fung Int'l Inc. of City of Industry, California; AUTOSTARLAND Technology (US), Inc. of Riverside, California; DNA Motoring of City of Industry, California; Fanciest Pickup Accessories of Riverside, California; Future Trucks a/k/a Future Trading Company, LLC of Houston, Texas; Ikon Motorsports, Inc. of City of Industry, California; Jiaxing Kscar Auto Accessories Co., Ltd. a/k/a KSC Auto of Pinghu City, China; Kiko Kikito of Ruian City, China; Lyon Cover Auto a/k/a Truck Tonneau Covers of Wenzhou City, China; Mamoru Cover, a/k/a Ningbo Surpass Auto Parts Co., Ltd. of Ningbo City, China; MOSTPLUS Auto of Hong Kong, China; Newpowa America, Inc. of Ontario, California; New Home Materials, Inc. of Riverside, California; OEDRO of Kent, Washington; Pickup Zone, a/k/a Dai Qun Feng of Riverside, California; RDJ Trucks, LLC of Talmo, Georgia (“RDJ”); Smittybilt, Inc. of Compton, California; Trek Power, Inc. of Placentia, California (“Trek”);

and Wenzhou Tianmao Automobile Parts Co., Ltd. of Wenzhou, China. *Id.* The Office of Unfair Import Investigations (“OUII”) is participating in this investigation. *Id.*

The Commission subsequently granted leave to amend the complaint and notice of investigation to change the names of several respondents. Order No. 9 (May 4, 2023), *unreviewed by* Notice, *see* 88 FR 36615–16 (Jun. 5, 2023). Specifically, the Commission granted leave to change the names of: (1) respondents 4 Wheel Parts and Smittybilt, Inc. to TAP Worldwide, LLC d/b/a 4 Wheel Parts; (2) respondent MOSTPLUS Auto to Ultimate Motor Parts Limited; (3) respondent OEDRO to Hong Kong Yintatech Network Co., Ltd. a/k/a OEDRO; (4) respondent Ikon Motorsports, Inc. to Advance Tuning, LLC d/b/a Ikon Motorsports, Inc.; (5) respondents AUTOSTARLAND Technology (US), Inc. and Pickup Zone a/k/a Dai Qun Feng to Autostarland Technology (US), Inc. dba Pickup Zone; (6) respondent Mamoru Cover a/k/a Ningbo Surpass Auto Parts Co., Ltd. to Ningbo Surpass Auto Parts Co., Ltd.; (7) respondent American Trucks to American Trucks Inc. and Turn 5 d/b/a American Trucks; (8) respondent Kiko Kikito to Wenzhou Tianmao Automobile Parts Co., Ltd. DBA Kikito and Rui'an Yiming Trading Co. Ltd.; and (9) respondent Lyon Cover Auto a/k/a Truck Tonneau Covers to Wenzhou Tianmao Automobile Parts Co., Ltd. DBA Lyon Cover and Wenzhou Chaoming Auto Parts Co., Ltd.

The Commission also subsequently terminated certain respondents based on settlement and/or the entry of a consent order. Order No. 15 (Jun. 13, 2023), *unreviewed by* Notice (Jul. 11, 2023) (terminating TAP Worldwide, LLC d/b/a 4 Wheel Parts based on a settlement agreement); Order No. 17 (Jul. 11, 2023), *unreviewed by* Notice (Aug. 9, 2023) (terminating Advance Tuning, LLC d/b/a Ikon Motorsport, Inc. based on the entry of a consent order); Order No. 18 (Jul. 18, 2023), *unreviewed by* Notice (Aug. 16, 2023) (terminating American Trucks, Inc. and Turn 5 d/b/a American Trucks based on a settlement agreement); Order Nos. 22, 23, and 24 (Jul. 31, 2023), *unreviewed by* Notice (Aug. 28, 2023) (terminating Ningbo Surpass Auto Parts Co., Ltd., Newpowa America, Inc., and New Home Materials, Inc. based on settlement and entry of a consent order); Order Nos. 25 and 26 (Aug. 1, 2023), *unreviewed by* Notice (Aug. 30, 2023) (terminating Autostarland Technology (US), Inc. d/b/a Pickup Zone and Fanciest Pickup Accessories based on settlement and entry of a consent order); Order No. 27

(Aug. 21, 2023), *unreviewed by* Notice (Sept. 19, 2023) (terminating Auto Dynasty a/k/a Shun Fung International Inc. based on settlement and entry of a consent order); Order No. 28 (Aug. 24, 2023), *unreviewed by* Corrected Notice (Sept. 20, 2023) (terminating DNA Motoring based on settlement and entry of a consent order); Order Nos. 29 and 30 (Aug. 25, 2023), *unreviewed by* Notice (Sept. 21, 2023) (terminating Wenzhou Tianmao Automobile Parts Co., Ltd., Wenzhou Tianmao Automobile Parts Co., Ltd. DBA Kikito, Rui'an Yiming Trading Co. Ltd., Wenzhou Tianmao Automobile Parts Co., Ltd. DBA Lyon Cover, Wenzhou Chaoming Auto Parts Co., Ltd., Jiaxing Kscar Auto Accessories Co. Ltd. a/k/a KSC Auto, Future Trucks a/k/a Future Trading Co., LLC, Ultimate Motor Parts Limited, and Hong Kong Yintatech Network Co., Ltd. based on settlement and entry of a consent order).

On August 22, 2023, the Commission found RDJ and Trek in default. Order No. 19 (Jul. 21, 2023), *unreviewed by* Notice (Aug. 22, 2023). On October 6, 2023, Extang and BAK (“Movants”) filed a motion for a summary determination of violation with respect to claims 2–4 of the ‘758 patent and claims 1–3 of the ‘788 patent, and requested the entry of a GEO, the entry of CDOs against RDJ and Trek, and the imposition of a bond rate of 100 percent of the entered value of infringing articles imported during the period of Presidential review. On October 27, 2023, OUII filed a response in support of the motion and the requested remedial relief.

On April 23, 2024, the ALJ issued an initial determination (Order No. 33) (“ID”) granting the Movants’ motion for summary determination of violation and included a recommended determination on remedy and bond (“RD”) recommending issuance of a GEO, the issuance of CDOs against RDJ and Trek, and the imposition of a bond in the amount of 100 percent of the entered value of infringing products during the period of Presidential review. Specifically, the ID finds that: (1) the importation requirement is satisfied; (2) all of the remaining asserted claims are infringed by RDJ's and Trek's products; and (3) Movants have satisfied the domestic industry requirement with respect to the ‘758 and ‘788 patents. In support of its recommendation for issuance of a GEO, the RD finds that: (1) a GEO is necessary in this investigation to prevent circumvention of a limited exclusion order and (2) the record shows a pattern of violation of section 337 through importation of articles that infringe the ‘758 and ‘788 patents, and

the source of those infringing articles is difficult to identify. No party petitioned for review of the ID.

On June 7, 2024, the Commission determined not to review the ID and sought briefing on remedy, the public interest, and bonding. 89 FR 50370–72 (Jun. 13, 2024). On June 21, 2024, the Commission received initial responses from the Movants and OUII. On June 24, 2024, the Commission received a response from non-party Rough Country LLC. On June 28, 2024, the Commission received reply responses from OUII.

Having reviewed the written submissions and the evidentiary record, the Commission has determined that the appropriate remedy in this investigation is a GEO prohibiting the unlicensed importation of certain pick-up truck folding bed cover systems and components thereof that infringe claims 2–4 of the '758 patent and claims 1–3 of the '788 patent and CDOs against RDJ and Trek with respect to those claims. The Commission has further determined that the public interest factors enumerated in section 337(d), (f), and (g) (19 U.S.C. 1337(d), (f), and (g)) do not preclude issuance of the GEO or CDOs. Finally, the Commission has determined to impose a bond in the amount of one hundred (100) percent of the entered value of the infringing articles that are imported during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is hereby terminated in its entirety.

The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order.

The Commission vote for these determinations took place on September 19, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 19, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–21905 Filed 9–24–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–687 and 731–TA–1614 (Final)]

Brass Rod From Israel

Determinations

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that an industry in the United States is materially injured by reason of imports of brass rod from Israel, provided for in subheadings 7407.21.15, 7407.21.30, 7407.21.70, and 7407.21.90 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV") and subsidized by the government of Israel.^{2 3}

Background

The Commission instituted these investigations effective April 27, 2023, following receipt of petitions filed with the Commission and Commerce by American Brass Rod Fair Trade Coalition, Washington, District of Columbia; Mueller Brass Co., Port Huron, Michigan; and Wieland Chase LLC, Montpelier, Ohio. The Commission scheduled the final phase of the investigations following notification of a preliminary determination by Commerce that imports of brass rod from India were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 5, 2023 (88 FR 6922). The Commission conducted its hearing on December 12, 2023. All persons who requested the opportunity were permitted to participate.

The investigation schedules became staggered when Commerce did not align its countervailing duty investigation regarding India with its antidumping duty investigation regarding India, and reached an earlier final countervailing

duty determination. On February 1, 2024, the Commission issued a final affirmative determination in its countervailing duty investigation of brass rod from India (89 FR 8440, February 7, 2024). On June 5, 2024, the Commission issued final affirmative determinations in its countervailing duty investigation of brass rod from South Korea and its antidumping duty investigations of brass rod from Brazil, India, Mexico, South Africa, and South Korea (89 FR 49193, June 11, 2024). The investigation schedules became further staggered when Commerce aligned its countervailing duty investigation regarding Israel with its antidumping duty investigation regarding Israel and tolled all deadlines for its antidumping duty investigation regarding Israel by 90 days.

Following notification of final determinations by Commerce that imports of brass rod from Israel were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)) and were being subsidized by the government of Israel within the meaning of section 705(a) of the Act (19 U.S.C. 1671d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping duty and countervailing duty investigations regarding brass rod from Israel was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 16, 2024 (89 FR 66738).

The Commission made these determinations pursuant to § 705(b) and § 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on September 19, 2024. The views of the Commission are contained in USITC Publication 5545 (September 2024), entitled *Brass Rod from Israel: Investigation Nos. 701–TA–687 and 731–TA–1614 (Final)*.

By order of the Commission.

Issued: September 19, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–21891 Filed 9–24–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Ryan Cohen; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act,

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² 89 FR 63402 and 89 FR 63410, August 5, 2024.

³ Commissioner David S. Johanson dissenting.

15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America v. Ryan Cohen*, Civil Action 1:24–CV–02670. On September 18, 2024, the United States filed a Complaint alleging that Ryan Cohen violated the premerger notification and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, in connection with the acquisition of voting securities of Wells Fargo & Company. The proposed Final Judgment, filed at the same time as the Complaint, requires Ryan Cohen to pay a civil penalty of \$985,320.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at <http://www.justice.gov/atr> and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments in English should be directed to Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC–8416, Washington, DC 20580 or by email to bccompliance@ftc.gov.

Suzanne Morris,
Deputy Director of Civil Enforcement
Operations.

United States District Court for the District of Columbia

United States of America, c/o Department of Justice, Washington, DC 20530, Plaintiff, v. Ryan Cohen, c/o RC Ventures, LLC, P.O. Box 25250, PMB 30427, Miami, FL 33102, Defendant.

Civil Action No.

Complaint for Civil Penalties for Failure To Comply With the Premerger Reporting and Waiting Requirements of the Hart-Scott Rodino Act

The United States of America, acting under the direction of the Attorney General of the United States and at the request of the United States Federal Trade Commission, brings this civil antitrust action to obtain monetary relief in the form of civil penalties against

Defendant Ryan Cohen (“Cohen”). The United States alleges as follows:

I. Nature of the Action

1. Cohen violated the notice and waiting period requirements of Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act” or “Act”), in March 2018 when he acquired voting securities of Wells Fargo & Company (“Wells Fargo”) in excess of the threshold for filing established by the HSR Act.

II. Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 7A(g) of the Clayton Act, 15 U.S.C. 18a(g), and 28 U.S.C. 1331, 1337(a), 1345, and 1355, and over Defendant by virtue of Defendant's consent in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

3. Venue is proper in this District by virtue of Defendant's consent in the Stipulation relating hereto, to the maintenance of this action and entry of the Final Judgment in this District.

III. The Defendant

4. Defendant Cohen is a natural person with his principal office and place of business at RC Ventures, LLC, P.O. Box 25250, PMB 30427, Miami, FL 33102. Cohen is an entrepreneur and is the managing member of RC Ventures, LLC. Cohen is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Cohen had sales or assets that met the operative threshold.

IV. Other Entity

5. Wells Fargo & Company is a corporation organized under the laws of Delaware with its principal place of business at 420 Montgomery Street, San Francisco, CA 94104. Wells Fargo is engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. 12, and Section 7A(a)(1) of the Clayton Act, 15 U.S.C. 18a(a)(1). At all times relevant to this complaint, Wells Fargo had sales or assets that met the operative threshold.

V. The Hart-Scott-Rodino Act and Rules

6. The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Department of Justice and the Federal

Trade Commission (collectively, the “federal antitrust agencies”) and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b). These notification and waiting period requirements apply to acquisitions that meet the HSR Act's size of transaction and size of person thresholds, which have been adjusted annually since 2004. The size of transaction threshold is met for transactions valued over \$50 million, as adjusted (\$84.4 million in 2018). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of \$100 million, as adjusted (\$168.8 million in 2018). With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of \$10 million, as adjusted (\$16.9 million in 2018), and the other person to have sales or assets in excess of \$100 million, as adjusted (\$168.8 million in 2018).

7. The HSR Act's notification and waiting period requirements are intended to give the federal antitrust agencies prior notice of, and information about, proposed transactions. The waiting period is also intended to provide the federal antitrust agencies with the opportunity to investigate a proposed transaction and to determine whether to seek an injunction to prevent the consummation of a transaction that may violate the antitrust laws.

8. At all times relevant to this complaint, the HSR Act required, *inter alia*, an acquirer who meets the operative threshold who, as a result of an acquisition, would hold voting securities in excess of a relevant filing threshold of an issuer who also meets the operative threshold, to file premerger notification and report forms with the federal antitrust agencies and to observe the required waiting period before making the acquisition, unless otherwise exempted.

9. As codified in 15 U.S.C. 18a(c)(9), the Act exempts from the requirements of the HSR Act acquisitions of voting securities “solely for the purpose of investment” if, as a result of the acquisition, the securities held do not exceed 10 percent of the outstanding voting securities of the issuer.

10. Pursuant to Section (d)(2) of the HSR Act, 15 U.S.C. 18a(d)(2), rules were promulgated to carry out the purposes of the HSR Act. 16 CFR 801–03 (“HSR Rules”). The HSR Rules, among other things, define terms contained in the HSR Act.

11. Section 801.1(i)(1) of the HSR Rules, 16 CFR 801.1(i)(1), defines the term “solely for the purpose of investment” as follows:

Voting securities are held or acquired “solely for the purpose of investment” if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

12. Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable to the United States for a civil penalty for each day during which such person is in violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), the dollar amounts of civil penalties listed in Federal Trade Commission Rule 1.98, 16 CFR 1.98, are adjusted annually for inflation; the maximum amount of civil penalty in effect at the time of Cohen’s corrective filing was \$43,792 per day. 86 FR 2541 (January 13, 2021).

VI. Defendant’s Violation of the HSR Act

13. Beginning in June 2016, Cohen made periodic acquisitions of Wells Fargo voting securities.

14. On February 5, 2018, Cohen emailed Wells Fargo’s CEO to advise him of the contributions he could make to Wells Fargo should he become a member of the Board of Directors. Cohen also made suggestions on how Wells Fargo could improve its operations, such as improving its technology and mobile app. Cohen proceeded to have periodic communications with Wells Fargo’s leadership regarding suggestions to improve Wells Fargo’s business and to advocate for a potential board seat through at least April 2020.

15. On March 22, 2018, Cohen acquired 562,077 voting securities in Wells Fargo in the open market, which resulted in his aggregated holdings of Wells Fargo voting securities exceeding the \$100 million threshold, as adjusted, which in March 2018, was \$168.8 million.

16. Cohen’s acquisitions of Wells Fargo voting securities described in Paragraph 15 above were not exempt under the HSR Act’s “solely for the purpose of investment” exemption. Although Cohen’s holdings of Wells Fargo voting securities did not exceed 10 percent of the outstanding voting securities, Cohen’s intent when he made the March 22, 2018, acquisitions of

Wells Fargo voting securities was to participate “in the formulation, determination, or direction of the basic business decisions” of Wells Fargo, as evidenced, *inter alia*, by Cohen’s email on February 5, 2018, wherein he advocated to join the Wells Fargo’s board as described in Paragraph 14.

17. Although required to do so, Cohen did not file anything under the HSR Act or observe the HSR Act’s waiting period prior to completing the March 22, 2018, transaction.

18. From March 22, 2018, through September 2, 2020, Cohen continued to acquire Wells Fargo voting securities through open market purchases, and in twenty instances those acquisitions exceeded 100,000 shares. For example, Cohen acquired: 350,000 voting securities on August 14, 2019; 354,131 voting securities on March 10, 2020; 366,316 voting securities on July 20, 2020; and 500,000 voting securities on August 5, 2020.

19. All these acquisitions described in Paragraph 18 were made on the open market. Open market acquisitions require an acquirer to decide affirmatively and actively to acquire voting securities; given the scope of Cohen’s open market acquisitions, it was not excusable negligence for him to be unaware of HSR Act legal requirements.

20. On January 14, 2021, Cohen made a corrective filing under the HSR Act for the acquisition he made on March 22, 2018. That acquisition resulted in Cohen’s aggregated holdings of Wells Fargo voting securities exceeding the \$100 million threshold, as adjusted.

21. Cohen was in continuous violation of the HSR Act from March 22, 2018, when he acquired the Wells Fargo voting securities valued in excess of the HSR Act’s \$100 million filing threshold, as adjusted, through February 16, 2021, when the waiting period expired on his corrective filing.

VII. Requested Relief

Wherefore, the United States requests:

a. that the Court adjudge and decree that Defendant’s acquisitions of Wells Fargo voting securities from March 22, 2018, through September 2, 2020, were violations of the HSR Act, 15 U.S.C. 18a; and that Defendant was in violation of the HSR Act each day from March 22, 2018, through February 16, 2021;

b. that the Court order Defendant to pay to the United States an appropriate civil penalty as provided by the Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation

Adjustment Act of 1990, 28 U.S.C. 2461), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 86 FR 2541 (January 13, 2021);

c. that the Court order such other and further relief as the Court may deem just and proper; and

d. that the Court award the United States its costs of this suit.

Dated: September 18, 2024.

For the Plaintiff United States of America:

Jonathan Kanter,
Assistant Attorney General, Department of Justice, Antitrust Division, Washington, DC 20530.

Maribeth Petrizzi,
DC Bar No. 435204, Special Attorney.

Kenneth A. Libby,
Special Attorney.

Jennifer Lee,
Special Attorney.

Danielle Sims,
DC Bar No. 982506, Special Attorney.
Federal Trade Commission, Washington, DC 20580, (202) 326–2694.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Ryan Cohen*, Defendant.
Civil Action No.

[Proposed] Final Judgment

Whereas the United States of America filed its Complaint on September 18, 2024, alleging that Defendant Ryan Cohen violated Section 7A of the Clayton Act (15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”));

And whereas the United States and Defendant have consented to the entry of this Final Judgment without the taking of testimony, without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

Now, therefore, it is ordered, adjudged, and decreed:

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief can be granted

against Defendant under Section 7A of the Clayton Act, 15 U.S.C. 18a.

II. Civil Penalty

Judgment is hereby entered in this matter in favor of the United States and against Defendant, and, pursuant to Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1), the Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 701 (further amending the Federal Civil Penalties Inflation Adjustment Act of 1990), and Federal Trade Commission Rule 1.98, 16 CFR 1.98, 87 FR 1070 (January 10, 2022), Defendant is hereby ordered to pay a civil penalty in the amount of nine hundred eighty-five thousand three hundred and twenty dollars (\$985,320). Payment of the civil penalty ordered hereby must be made by wire transfer of funds or cashier's check. If the payment is to be made by wire transfer, prior to making the transfer, Defendant will contact the Budget and Fiscal Section of the Antitrust Division's Executive Office at ATR.EXO-Fiscal-Inquiries@usdoj.gov for instructions. If the payment is made by cashier's check, the check must be made payable to the United States Department of Justice—Antitrust Division and delivered to: Chief, Budget & Fiscal Section, Executive Office, Antitrust Division, United States Department of Justice, Liberty Square Building, 450 5th Street NW, Room 3016, Washington, DC 20530

Defendant must pay the full amount of the civil penalty within thirty (30) days of entry of this Final Judgment. In the event of a default or delay in payment, interest at the rate of eighteen percent (18%) per annum will accrue thereon from the date of the default or delay to the date of payment.

III. Costs

Each party will bear its own costs of this action, except as otherwise provided in Paragraph IV.C.

IV. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendant agrees that in a civil contempt action, a motion to show cause, or a similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of this Final

Judgment and the appropriateness of a remedy therefor by a preponderance of the evidence, and Defendant waives any argument that a different standard of proof should apply.

B. Defendant agrees that he may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. The terms of this Final Judgment should not be construed against either party as the drafter.

C. In connection with a successful effort by the United States to enforce this Final Judgment against Defendant, whether litigated or resolved before litigation, Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as all other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

v. Expiration of Final Judgment

This Final Judgment will expire upon payment in full by the Defendant of the civil penalty required by Section II of this Final Judgment.

VI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

[Court approval subject to the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16]

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Ryan Cohen*, Defendant.

Civil Action No. _____

Competitive Impact Statement

The United States of America ("United States"), under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) ("APPA" or "Tunney Act"), files this Competitive Impact Statement relating to the

proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On September 18, 2024, the United States filed a Complaint against Defendant Ryan Cohen ("Cohen" or "Defendant"), relating to Cohen's acquisitions of voting securities of Wells Fargo & Company ("WF") from March 2018 through September 2020. The Complaint alleges that Cohen violated Section 7A of the Clayton Act, 15 U.S.C. 18a, commonly known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The HSR Act requires certain acquiring persons and certain persons whose voting securities or assets are acquired to file notifications with the Department of Justice and the Federal Trade Commission (collectively, the "federal antitrust agencies") and to observe a waiting period before consummating certain acquisitions of voting securities or assets. 15 U.S.C. 18a(a) and (b).

These notification and waiting period requirements apply to acquisitions that meet the HSR Act's size of transaction and size of person thresholds, which have been adjusted annually since 2004. The size of transaction threshold is met for transactions valued over \$50 million, as adjusted (\$84.4 million in 2018). In addition, there is a separate filing requirement for transactions in which the acquirer will hold voting securities in excess of \$100 million, as adjusted (\$168.8 million in 2018).

With respect to the size of person thresholds, the HSR Act requires one person involved in the transaction to have sales or assets in excess of \$10 million, as adjusted (\$16.9 million in 2018), and the other person to have sales or assets in excess of \$100 million, as adjusted (\$168.8 million in 2018). A key purpose of the notification and waiting period requirements is to protect consumers and competition from potentially anticompetitive transactions by providing the federal antitrust agencies an opportunity to conduct an antitrust review of proposed transactions before they are consummated.

An exemption from HSR Act filings may apply under certain circumstances. Section (c)(9) of the HSR Act, 15 U.S.C. 18a(c)(9), exempts from the requirements of the HSR Act acquisitions of voting securities "solely for the purpose of investment" if, as a result of the acquisition, the securities held do not exceed 10 percent of the outstanding voting securities of the issuer. Section 801.1(i)(1) of the HSR Rules, 16 CFR 801.1(i)(1), defines the

term “solely for the purpose of investment” as follows:

Voting securities are held or acquired “solely for the purpose of investment” if the person holding or acquiring such voting securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer (“Investment-Only Exemption”).

The Complaint alleges that Cohen acquired voting securities of WF without filing the required pre-acquisition HSR Act notifications with the federal antitrust agencies and without observing the waiting period. Cohen’s acquisitions of WF voting securities exceeded the \$100-million statutory threshold, as adjusted, and Cohen and WF met the then-applicable adjusted statutory size of person thresholds. Moreover, none of Cohen’s acquisitions were exempt from HSR Act notification and waiting period requirements under the Investment-Only Exemption.

At the same time the Complaint was filed in the present action, the United States also filed a Stipulation and Order and proposed Final Judgment that resolve the allegations made in the Complaint. The proposed Final Judgment is designed to address the violation alleged in the Complaint and penalize Cohen’s HSR Act violations. Under the proposed Final Judgment, Cohen must pay a civil penalty to the United States in the amount of \$985,320.

The United States and Cohen have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States first withdraws its consent. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

The crux of Cohen’s violation is that he failed to submit HSR Act notifications even though his acquisitions of WF voting securities satisfied the HSR Act filing requirements and he was not eligible to take advantage of the Investment-Only Exemption. At all times relevant to the Complaint, Cohen had sales or assets in excess of \$10 million, as adjusted. At all times relevant to the Complaint, WF had sales or assets in excess of \$100 million, as adjusted.

Cohen is an entrepreneur and the managing partner of RC Ventures, LLC, a venture capital fund. Cohen

previously founded the e-commerce company Chewy, Inc., in 2011, and was its CEO until 2018. Cohen is now the Chairman of GameStop Corp.

Beginning in June 2016, Cohen made periodic acquisitions of WF voting securities. On February 5, 2018, Cohen emailed WF’s CEO to suggest improvements to WF’s business operations and to advocate for a board seat. On March 22, 2018, Cohen acquired 562,077 WF voting securities via the open market, which resulted in his aggregated holdings to exceed the \$100 million threshold, as adjusted, which in March 2018, was \$168.8 million.

Cohen’s March 22, 2018, acquisitions of WF voting securities were not exempt under the Investment-Only Exemption. Cohen’s intent when he made the March 22, 2018, acquisitions of WF voting securities was to participate “in the formulation, determination, or direction of the basic business decisions” of WF as evidenced by Cohen’s email on February 5, 2018, when he advocated for a board seat. Although required to do so, Cohen did not file under the HSR Act or observe the HSR Act’s waiting period prior to completing the March 22, 2018, transaction. Cohen proceeded to have periodic communications with WF’s leadership regarding suggestions to improve WF’s business and to advocate for a potential board seat through at least April 2020.

From March 22, 2018, through September 2, 2020, Cohen continued to acquire WF voting securities through open market purchases, and in twenty instances those acquisitions exceeded 100,000 shares. For example, Cohen acquired 350,000 voting securities on August 14, 2019; 354,131 voting securities on March 10, 2020; 366,316 voting securities on July 20, 2020; and 500,000 voting securities on August 5, 2020. All of these acquisitions were made on the open market. Open market acquisitions require an acquirer to affirmatively and actively decide to acquire voting securities; in particular for very large open market acquisitions, it is not excusable negligence to be unaware of HSR Act legal requirements.

On January 14, 2021, Cohen made a corrective filing under the HSR Act for the acquisition he made on March 22, 2018, which resulted in Cohen’s aggregated holdings of WF voting securities to exceed the \$100 million threshold, as adjusted. Cohen was in continuous violation of the HSR Act from March 22, 2018, when he acquired the WF voting securities valued in excess of the HSR Act’s \$100 million filing threshold, as adjusted, through

February 16, 2021, when the waiting period expired on his corrective filing.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment imposes a \$985,320 civil penalty designed to address the violation alleged in the Complaint, penalize the Defendant, and deter others from violating the HSR Act. The United States adjusted the penalty downward from the maximum permitted under the HSR Act because the violation was inadvertent and the Defendant is willing to resolve the matter by proposed final judgment and thereby avoid prolonged investigation and litigation. However, the penalty amount reflects that Defendant was seeking a board seat during the period in which he was making acquisitions of WF voting securities and could no longer rely on the Investment-Only Exemption. In addition, many of these acquisitions were large, open market acquisitions, such that he should have been aware of his obligations under the HSR Act. Open market acquisitions require an acquirer to affirmatively and actively decide to acquire voting securities; in particular for very large open market acquisitions, it is not excusable negligence to be unaware of HSR Act legal requirements. The penalty will not have any adverse effect on competition; instead, the relief should have a beneficial effect on competition because it will deter the Defendant and others from failing to properly notify the federal antitrust agencies of future acquisitions, in accordance with the law.

IV. Remedies Available to Potential Private Litigants

There is no private antitrust action for HSR Act violations; therefore, entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust action.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the Defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court’s determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments

regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, the comments and the United States' responses will be published in the **Federal Register** unless the Court agrees that the United States instead may publish them on the U.S. Department of Justice, Antitrust Division's internet website. Written comments should be submitted in English to: Maribeth Petrizzi, Special Attorney, United States, c/o Federal Trade Commission, 600 Pennsylvania Avenue NW, CC-8416, Washington, DC 20580, Email: bccompliance@ftc.gov.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendant. The United States is satisfied, however, that the proposed relief is an appropriate remedy in this matter. Given the facts of this case, including the Defendant's self-reporting of the violations and willingness to promptly settle this matter, the United States is satisfied that the proposed civil penalty is sufficient to address the violations alleged in the Complaint and to deter violations by similarly situated entities in the future, without the time, expense, and uncertainty of a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

Under the Clayton Act and APPA, proposed Final Judgments or "consent decrees" in antitrust cases brought by the United States are subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in

accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a proposed Final Judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "make de novo determination of facts and issues." *United States v. W. Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead, "[t]he

balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General." *W. Elec. Co.*, 993 F.2d at 1577 (quotation marks omitted). "The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest." *Microsoft*, 56 F.3d at 1460 (quotation marks omitted); *see also United States v. Deutsche Telekom AG*, No. 19-2232 (TJK), 2020 WL 1873555, at *7 (D.D.C. Apr. 14, 2020). More demanding requirements would "have enormous practical consequences for the government's ability to negotiate future settlements," contrary to congressional intent. *Microsoft*, 56 F.3d at 1456. "The Tunney Act was not intended to create a disincentive to the use of the consent decree." *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152-53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." (internal citations omitted)); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case."). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" *Microsoft*, 56 F.3d at 1461 (quoting *W. Elec. Co.*, 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint and does not authorize the

Court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“[T]he ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using judgments proposed by the United States in antitrust enforcement, Pub. L. 108–237 § 221, and added the unambiguous instruction that “[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). “A court can make its public interest determination based on the competitive impact statement and response to public comments alone.” *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *Enova Corp.*, 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 18, 2024.

Respectfully submitted,

Kenneth A. Libby,
Special Attorney, U.S. Department of Justice,
Antitrust Division, c/o Federal Trade
Commission, 600 Pennsylvania Avenue NW,
Washington, DC 20580, Phone: (202) 326–
2694, Email: klibby@ftc.gov.

[FR Doc. 2024–21943 Filed 9–24–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1410]

Importer of Controlled Substances Application: Curium US LLC

AGENCY: Drug Enforcement
Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curium US LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 25, 2024. Such persons may also file a written request for a hearing on the application on or before October 25, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should

also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 4, 2024, Curium US LLC, 2703 Wagner Place, Maryland Heights, Missouri 63043–3421, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Ecgonine	9180	II

The company plans to import small quantities of a derivative form of the listed controlled substance to be used for manufacturing purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Marsha L. Ikner,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–21850 Filed 9–24–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–ONEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Drug Use Statement

AGENCY: Drug Enforcement
Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Drug Enforcement Administration, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 19, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions

or additional information, please contact Kannessia Jordan, Section Chief, Office of Compliance, Policy Administration Section 700 Army Navy Drive, Arlington, VA 22202, telephone: 571-776-2262, email: Kannessia.S.Jordan@DEA.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register** on July 19, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

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 [OMB 1117-0043]. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision.
 2. *Title of the Form/Collection:* Drug Enforcement Administration Pre-Employment Drug Policy Notification and Acknowledgement.
 3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form number: DEA-200. The sponsoring component is the Drug Enforcement Administration.
 4. *Affected public who will be asked or required to respond, as well as a brief abstract:* DEA job applicants are asked to complete the form. While not mandatory, an applicant can be disqualified in the hiring process for failing to provide the requested acknowledgement.
 5. *Obligation to Respond:* Mandatory DEA Pre-Employment Drug Policy.
 6. *Total Estimated Number of Respondents:* 4,727.
 7. *Estimated Time per Respondent:* 7 minutes.
 8. *Frequency:* 1.
 9. *Total Estimated Annual Time Burden:* 551 hours.
 10. *Total Estimated Annual Other Costs Burden:* \$0.
- If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: September 20, 2024.

Darwin Arceo,
Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024-21939 Filed 9-24-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF LABOR

[OMB Control No. 1290-0NEW]

Department of Labor's Restricted Use Data Access Program; Correction

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Correction.

SUMMARY: In the **Federal Register** of August 24, 2023, in notice document 2023-18234 on page 57975, make the following correction:

In the subject line correct "Department of Labor's Restricted Use

Data Access Program" to read "Secure Transfer, Restricted-Use Data Lake".

Alix Gould-Werth,
Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2024-21637 Filed 9-24-24; 8:45 am]

BILLING CODE 4510-HX-P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 24-07]

Millennium Challenge Corporation Selection Criteria and Methodology Report for Fiscal Year 2025

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: The Millennium Challenge Act of 2003, as amended, requires the Millennium Challenge Corporation to publish a report that identifies the criteria and methodology that MCC intends to use to determine which candidate countries may be eligible to be considered for assistance under the Millennium Challenge Act for fiscal year 2025. The report is set forth in full below.

(Authority: 22 U.S.C. 7707(b)(2))

Dated: September 20, 2024.

Peter E. Jaffe,
Vice President, General Counsel, and Corporate Secretary.

Millennium Challenge Corporation Selection Criteria and Methodology Report for Fiscal Year 2025

This document explains how the Board of Directors (the Board) of the Millennium Challenge Corporation (MCC) will identify, evaluate, and select eligible countries for fiscal year (FY) 2025. Specifically, this document discusses the following:

- (I) Which countries MCC will evaluate
- (II) How the Board evaluates these countries
 - A. Overall evaluation
 - B. For selection of an eligible country for a first compact
 - C. For selection of an eligible country for a subsequent compact
 - D. For selection of an eligible country for a concurrent compact
 - E. For threshold program assistance
 - F. A note on potential transition out of MCC's candidate pool after initial selection

This report is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended (the Act), as more fully described in Appendix A.

(I) Which countries are evaluated?

MCC evaluates the policy performance of all candidate countries and statutorily-prohibited countries by dividing them into separate income categories for the purposes of creating “scorecards.” These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. In FY 2025, those scorecard evaluation income categories¹ are:

- Countries whose gross national income (GNI) per capita is \$2,165 or less;
- Countries whose GNI per capita is between \$2,166 and \$4,515; and
- Countries whose GNI per capita is between \$4,516 and \$7,895.

(II) How does the Board evaluate these countries?

A. Overall Evaluation

The Board looks at three statutorily-mandated factors when it evaluates any candidate country for compact eligibility: (1) policy performance; (2) the opportunity to reduce poverty and generate economic growth; and (3) the availability of MCC funds.

(1) Policy Performance

Appendix C describes all 20 indicators, their definitions, what is required to “pass,” their source, and their relationship to the statutory criteria. Because of the importance of evaluating a country’s policy performance in a comparable, cross-country way, the Board relies to the maximum extent possible upon the best-available objective and quantifiable policy performance indicators. These indicators act as proxies for a country’s commitment to just and democratic governance, economic freedom, and investing in its people. Composed of 20 third-party indicators in the categories of ruling justly, encouraging economic freedom, and investing in people, MCC scorecards are created for all candidate countries and statutorily-prohibited countries. To “pass” most indicators on

its scorecard, a country’s score on each indicator must be above the median score *in its income group* (as defined above for scorecard evaluation purposes). For the inflation, political rights, civil liberties, and immunization rates² indicators, however, MCC has established minimum or maximum scores for “passing.” In particular, the Board considers whether a country:

- passes at least 10 of the 20 indicators, with at least one pass in each of the three categories;
- passes either the Political Rights or Civil Liberties indicator; and
- passes the Control of Corruption indicator.

While satisfaction of all three aspects means a country is termed to have “passed” the scorecard, the Board also considers whether the country performs “substantially worse” in any one policy category than it does on the scorecard overall.

The mandatory passing of either the Political Rights or Civil Liberties indicators is called the Democratic Rights “hard hurdle” on the scorecard, while the mandatory passing of the Control of Corruption indicator is called the Control of Corruption “hard hurdle.” Not passing either “hard hurdle” results in not passing the scorecard overall, regardless of whether at least 10 of the 20 other indicators are passed.

• *Democratic Rights “hard hurdle.”* This hurdle sets a minimum bar for democratic rights below which the Board will not consider a country for compact eligibility. Requiring that a country pass *either* the Political Rights or Civil Liberties indicator creates a democratic incentive for countries, recognizes the importance democracy plays in driving poverty-reducing economic growth, and holds MCC to the high standard of working with the best governed, poorest countries. When a candidate country is only passing one of the two indicators comprising the hurdle (instead of both), the Board will also closely examine why it is not passing the other indicator to understand what the score implies for the broader democratic environment and trajectory of the country. This examination will include consultation with both local and international civil society experts, among others. The hurdle is an important signal of the importance MCC places on democratic

governance and the role of MCC programs in helping democracies deliver development results for their citizens—a democratic dividend.

• *Control of Corruption “hard hurdle.”* Corruption in any country is an unacceptable tax on economic growth and an obstacle to the private sector investment needed to reduce poverty. Accordingly, MCC seeks out partner countries committed to combatting corruption. It is for this reason that MCC also has the Control of Corruption “hard hurdle,” which helps ensure that MCC is working with countries where there is relatively strong performance in controlling corruption. Requiring the passage of the indicator incentivizes countries to demonstrate a clear commitment to controlling corruption, and allows MCC to better understand the issue by seeing how the country performs relative to its peers and over time.

Together, the 20 policy performance indicators are the predominant basis for determining which eligible countries will be selected for MCC assistance, and the Board expects a country to be passing its scorecard at the point the Board decides to select the country as eligible to develop a compact. The Board, however, also recognizes that even the best-available data has inherent challenges. Data gaps, real-time events versus data lags, the absence of narratives and nuanced detail, and other similar weaknesses affect each of these indicators. As such, the Board uses its judgment to interpret policy performance as measured by the scorecards. The Board may also consult other sources of information to enhance its understanding of the context underpinning a country’s policy performance beyond scorecard issues (e.g., specific policy issues related to trade, the treatment of civil society, other U.S. aid programs, financial sector performance, and security/foreign policy concerns). The Board uses its judgment on how best to weigh such information in assessing overall policy performance and making a final determination.

(2) The Opportunity To Reduce Poverty and Generate Economic Growth

While the Board considers a range of other information sources depending on the country, specific areas of attention typically include better understanding issues and trends in, and trajectory of:

- the state of democratic and human rights (especially vulnerable groups³);

¹ The income groups align with the definitions of low income countries and lower middle countries using the historical International Development Association (IDA) threshold published by the World Bank. MCC has used these categories to evaluate country performance since FY 2004. While the amended statute no longer uses those definitions for funding purposes, MCC continues to use them for evaluation purposes. The third category is listed in case the Millennium Challenge Corporation Candidate Country Reform Act legislation or legislation that would similarly reform the composition of MCC’s candidate pool becomes law prior to FY 2026 and between the date of publication of this report and the evaluation of countries.

² A minimum score required to pass has been established for the immunization rates indicator only when the median score is above a 90 percent immunization rate. Countries must score above 90 percent or the median for their scorecard income pool, whichever is lower, in order to pass the indicator.

³ For example: women; children; LGBTQI+ individuals; people with disabilities; and workers.

- civil society's perspective on salient governance issues;
- the control of corruption and rule of law;
- the potential for the private sector (both local and foreign) to lead investment and growth;
- poverty levels within a country; and
- the country's institutional capacity.

Where applicable, the Board also considers MCC's own experience and ability to reduce poverty and generate economic growth in a given country—such as considering MCC's core areas of expertise and skills versus a country's needs, and MCC's capacity to work with a country.

This information provides greater clarity on the likelihood that MCC programs will have an appreciable impact on reducing poverty by generating economic growth in a given country. The Board has used such information to better understand when a country's performance on a particular indicator may not be up to date or is about to change. It has also used supplemental information to decline to select countries that are otherwise passing their scorecards. More details on this subject (sometimes referred to as "supplemental information") can be found on MCC's website: www.mcc.gov/who-we-select/indicators.

(3) The Availability of MCC Funds

The final factor that the Board must consider when evaluating countries is the availability of funds. The agency's budget is constrained, and often specifically limited, by provisions in the Act and in applicable appropriations acts. MCC has a continuous pipeline of countries in program development, implementation, and closure. Consequently, the Board factors in MCC's overall portfolio when making its selection decisions given current and projected funding availability for each planned or existing program.

* * * * *

The following subsections describe how the Board applies each of these three statutorily-mandated factors to: selection of countries for a compact, selection of countries for a subsequent compact, selection of countries for the threshold program, and selection of countries for a concurrent compact. A note follows on considerations for countries that might transition out of MCC's candidate pool after initial selection.

B. Evaluation for Selection of Eligible Countries for a First Compact

When selecting eligible countries for a compact, the Board looks at all three statutorily-mandated aspects described

in the previous section: (1) policy performance, first and foremost as measured by the scorecards and bolstered through supplemental information (as described in the previous section); (2) the opportunity to reduce poverty and generate economic growth, examined through the use of other supporting information (as described in the previous section); and (3) available funding.

At a minimum, the Board considers whether a country passes its scorecard. The Board also examines supporting evidence that a country's commitment to just and democratic governance, economic freedom, and investing in its people is on a sound footing and performance is on a positive trajectory (especially on the "hard hurdles" of Democratic Rights and Control of Corruption), and that MCC will have the funds to support a meaningful compact with that country. Where applicable, previous threshold program information is also considered. For those countries currently developing or implementing a threshold program, the Board will examine the progress the country has made toward substantial implementation.

The Board then weighs the information described above across each of the three dimensions. During the compact development period following initial selection, the Board reevaluates a selected country based on this same approach.

C. Evaluation for Selection of Eligible Countries for a Subsequent Compact

Section 609(l) of the Act authorizes MCC to enter into "one or more subsequent Compacts." MCC does not consider the eligibility of a country for a subsequent compact, however, before the country has completed its compact or is within 18 months of compact end date. Selection for a subsequent compact is not automatic and is intended for countries that (1) exhibit successful performance on their previous compact(s); (2) exhibit improved scorecard policy performance during the partnership; and (3) exhibit a continued commitment to further their sector reform efforts in any subsequent partnership. As a result, the Board has an even higher standard when selecting countries for subsequent compacts.

(1) Successful Implementation of the Previous Compact(s)

To evaluate any previous compact's success, the Board examines whether the compact succeeded within its budget and time limits, in particular by looking at three aspects of each compact program:

- *The degree to which there is evidence of strong political will and management capacity:* Is the partnership characterized by the country ensuring that both policy reforms and the compact program itself are both being implemented to the best of that country's ability?

- *The degree to which the country has exhibited commitment and capacity to achieve program results:* Are the financial and project results being achieved; to what degree is the country committing its own resources to ensure the compact is a success; to what extent is the private sector engaged (if relevant); and are there other compact-specific issues to take into account?

- *The degree to which the country has implemented the compact in accordance with MCC's core policies and standards:* Is the country adhering to MCC's policies and procedures, including in critical areas such as: remediating unresolved claims of fraud, corruption, or abuse of funds; procurement; and monitoring and evaluation?

Appendix D provides details on the specific information types examined and sources used in each of the three areas. Overall, the Board is looking for evidence that the previous compact(s) will be or has been completed on time and on budget, and that there is a commitment to continued, robust reform going forward.

(2) Improved Scorecard Policy Performance

The Board also expects the country to have improved its overall scorecard policy performance during the partnership and to pass the scorecard in the year of selection for the subsequent compact. The Board focuses on the following:

- The overall scorecard pass/fail rate over time and what this suggests about underlying policy performance, as well as an examination of the underlying reasons;

- The progress over time on policy areas measured by both hard hurdle indicators—Democratic Rights and Control of Corruption—including an examination of the underlying reasons; and

- Other indicator trajectories deemed relevant by the Board.

In all cases, while the Board expects the country to be passing its scorecard, the Board also examines other sources of information to understand the nuance and reasons behind scorecard or indicator performance over time, including any real-time updates, methodological changes within the indicators themselves, shifts in the

relevant candidate pool, or alternative policy performance perspectives (such as those gleaned through consultations with civil society and related stakeholders). The Board also consults other information sources to look at policy performance over time in areas not covered by the scorecard, but that the Board deems to be important (such as trade and foreign policy concerns).

(3) A commitment to Further Sector Reform

The Board expects that subsequent compacts will endeavor to tackle deeper policy reforms necessary to unlock an identified constraint to growth. Consequently, the Board considers MCC's own experience during the previous compact in considering how committed the country is to reducing poverty and increasing economic growth, and tries to gauge the country's commitment to further sector reform should it be selected for a subsequent compact. This includes:

- Assessing the country's delivery of policy reform during the previous compact (as described above);
- Assessing expectations of the country's ability and willingness to continue embarking on sector policy reform in a subsequent compact;
- Examining both other information sources describing the opportunity to reduce poverty by generating growth (as outlined in A.2 above) and the prior compact's relative success overall (as discussed above); and
- Considering how well funding can be leveraged for impact, given the country's experience in the previous compact.

* * * * *

Through this overall approach to selection for a subsequent compact, the Board applies the three statutorily-mandated evaluation criteria (policy performance, the opportunity to reduce poverty and generate economic growth, and available funds) in a way that assesses the previous partnership from a compact success standpoint, a commitment to improved scorecard policy performance standpoint, and a commitment to continued sector policy reform standpoint. The Board then weighs all the information described above in making its decision.

During the compact development period following initial selection, the Board reevaluates a selected country based on this same approach.

D. Evaluation for Concurrent Compacts

Section 609(k) of the Act authorizes MCC to enter into one additional concurrent compact with a country if one or both of the compacts with the

country is for the purpose of regional economic integration, increased regional trade, or cross-border collaborations.

The fundamental criteria and process for the selection of countries for such compacts remains the same as those for the selection of countries for non-concurrent compacts: countries continue to be evaluated and selected individually, as described in sections II.A, II.B, II.C, and II.F.

Section 609(k) also requires as a precondition for a concurrent compact that the Board determine that the country is making "considerable and demonstrable progress in implementing the terms of the existing Compact and supplementary agreements thereto." This statutory requirement is consistent with prior Board practice regarding the selection of a country for a non-concurrent compact. For a country where a concurrent compact is contemplated, the Board will take into account whether there is clear evidence of success, as relevant to the phase of the current compact. Among other information, the Board will examine the evaluation criteria described in Section II.C.1 above, notably:

- The degree to which there is evidence of strong political will and management capacity;
- The degree to which the country has exhibited commitment and capacity to achieve program results; and
- The degree to which the country has implemented the compact in accordance with MCC's core policies and standards.

In addition to providing information to the Board so it can make its determination regarding the country's progress in implementing its current compact, MCC will provide the Board with additional information relating to the potential for regional economic integration, increased regional trade, or cross-border collaborations for any country being considered for a concurrent compact. This information may include items such as:

- The current state of a country's regional integration, such as common financial and political dialogue frameworks, integration of productive value chains, and cross-border flows of people, goods, and services.
- The current and potential level of trade between a country and its neighbors, including analysis of trade flows and unexploited potential for trade, and an assessment of the extent and significance of tariff and non-tariff barriers, including information regarding the patterns of trade.
- The potential gains from cross-border cooperation between a country and its neighbors to alleviate bilateral

and regional bottlenecks to economic growth and poverty reduction, such as through physical infrastructure or coordinated policy and institutional reforms.

The Board then weighs all information as a whole—the fundamental selection factors described in sections II.A, II.B, II.C, and II.F, the information regarding implementation of the current compact, and any additional relevant information regarding potential regional integration—to determine whether or not MCC will seek to enter into a concurrent compact with a country.

E. Evaluation for Threshold Program Assistance

The Board may also evaluate countries for participation in the threshold program. Threshold programs provide assistance to candidate countries exhibiting a significant commitment to meeting the criteria described in the previous subsections but failing to meet such requirements. Specifically, in examining a candidate country's policy performance, the opportunity to reduce poverty and generate economic growth, and available funds, the Board will consider whether a country appears to be on a trajectory to becoming viable for compact eligibility in the medium or short term.

F. A Note on Potential Transition Out of MCC's Candidate Pool After Initial Selection

Some candidate countries may have a high per capita income or a high growth rate that implies there is a chance they could transition out of MCC's candidate pool during the life of an MCC partnership. It is not possible to accurately predict if or when such a transition may occur.

Nonetheless, such countries may have more resources at their disposal for funding their own growth and poverty reduction strategies. As a result, in addition to using the regular selection criteria described in the previous sections, the Board will use its discretion to assess both the need and the opportunity presented by partnering with such a country, in order to ensure that MCC's scarce grant funds are directed appropriately.

Specifically, if a candidate country with a high probability of transitioning out of MCC's candidate pool is under consideration for selection, the Board will examine additional data and information related to the following:

- Whether the country faces significant challenges accessing other sources of development financing (such

as international capital, domestic resources, and other donor assistance) and, if so, whether MCC grant financing would be an appropriate tool;

- Whether the nature of poverty in the country (for example, high inequality or poverty headcount ratios relative to peer countries) presents a clear and strategic opportunity for MCC to assist the country in reducing such poverty through projects that spur economic growth;

- Whether the country demonstrates particularly strong policy performance, including policies and actions that demonstrate a clear priority on poverty reduction; and

- Whether MCC can reasonably expect that the country would contribute a significant amount of funding to the compact.

These additional criteria would then be applied in any additional years of selection as the country continues to develop its compact. Should a country eventually transition out of MCC's candidate pool during compact development, it would no longer be a candidate for selection for that fiscal year. Continuing compact development beyond that point would then be at the Board's discretion.

Appendix A: Statutory Basis for This Report

This report to Congress is provided in accordance with section 608(b) of the Millennium Challenge Act of 2003, as amended (the Act), 22 U.S.C. 7707(b).

Section 605 of the Act authorizes the provision of assistance to countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries in achieving lasting economic growth and poverty reduction. The Act requires MCC to take a number of steps in selecting countries for compact assistance for FY 2025 based on the countries' demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, MCC's opportunity to reduce poverty and generate economic growth in the country, and the availability of funds. These steps include the submission of reports to the congressional committees specified in the Act and publication of information in the **Federal Register** that identify:

(1) The countries that are "candidate countries" for assistance for FY 2025 based on per capita income levels and eligibility to receive assistance under U.S. law and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act; 22 U.S.C. 7707(a));

(2) The criteria and methodology that MCC's Board of Directors (Board) will use to measure and evaluate policy performance of the candidate countries consistent with the requirements of subsections (a) and (b) of

section 607 of the Act (22 U.S.C. 7706) in order to determine "eligible countries" from among the "candidate countries" (section 608(b) of the Act; 22 U.S.C. 7707(b)); and

(3) The list of countries determined by the Board to be "eligible countries" for FY 2025, with justification for eligibility determination and selection for compact negotiation, including those eligible countries with which MCC will seek to enter into compacts (section 608(d) of the Act; 22 U.S.C. 7707(d)).

This report satisfies item 2 above.

Appendix B: Lists of all Candidate Countries and Statutorily-Prohibited Countries for Evaluation Purposes

Income Groups for Scorecards

Since MCC was created, it has relied on the *World Bank's gross national income (GNI) per capita income data* (Atlas method) and the historical ceiling for eligibility as set by the World Bank's International Development Association (IDA) to divide countries into separate income categories for purposes of creating scorecards. These categories are used to account for the income bias that occurs when countries with more per capita resources perform better than countries with fewer. Using the historical IDA eligibility ceiling for the scorecard evaluation groups ensures that the poorest countries compete with their income level peers and are not compared against countries with more resources to mobilize. Similarly, if the Millennium Challenge Corporation Candidate Country Reform Act (or legislation that similarly revises the threshold for MCC's candidate pool to the World Bank threshold for initiating the International Bank for Reconstruction and Development (IBRD) graduation process for the Fiscal Year) were to become law, MCC would group the countries newly included in the income pool in a third group to maintain this principle of countries competing with their income peers.

Therefore, for FY25, MCC will continue to use the historical IDA classifications for eligibility to categorize countries in groups for purposes of FY 2025 scorecard comparisons:

- Countries with GNI per capita equal to or less than IDA's historical ceiling for eligibility (i.e., \$2,165 for FY 2025); and

- Countries with GNI per capita above IDA's historical ceiling for eligibility but below the World Bank's lower middle income/upper middle income country threshold (i.e., \$2,166 and \$4,515 for FY 2025).

- Countries with GNI per capita above the World Bank's lower middle income/upper middle income country threshold but below the threshold for initiating the IBRD graduation process (i.e., \$4,516 and \$7,895 for FY 2025) would be a third category. This final category would be used only if legislation that reforms the composition of MCC's candidate pool passes between the date of publication of this report, and the evaluation of countries.

The list of countries that are candidates for FY 2025 scorecard assessments is set forth in the current FY 2025 Candidate Country Report.

Appendix C: Indicator Definitions

The following indicators will be used to measure candidate countries' demonstrated commitment to the criteria found in section 607(b) of the Act. The indicators are intended to assess the degree to which the political and economic conditions in a country serve to promote broad-based sustainable economic growth and reduction of poverty and thus provide a sound environment for the use of MCC funds. The indicators are not goals in themselves; rather, they are proxy measures of policies that are linked to broad-based sustainable economic growth. The indicators were selected based on (i) their relationship to economic growth and poverty reduction; (ii) the number of countries they cover; (iii) transparency and availability; and (iv) relative soundness and objectivity. Where possible, the indicators are developed by independent sources. Listed below is a brief summary of the indicators (a detailed rationale for the adoption of these indicators can be found in the public Guide to the Indicators on MCC's website at www.mcc.gov/who-we-select/indicators).

Ruling Justly

1. *Political Rights*: Independent experts rate countries on the prevalence of free and fair electoral processes; political pluralism and participation of all stakeholders; government accountability and transparency; freedom from domination by the military, foreign powers, totalitarian parties, religious hierarchies and economic oligarchies; and the political rights of minority groups, among other things. Pass: Score must be above the minimum score of 17 out of 40. Source: *Freedom House*.

2. *Civil Liberties*: Independent experts rate countries on freedom of expression and belief; association and organizational rights; rule of law and human rights; and personal autonomy and economic rights, among other things. Pass: Score must be above the minimum score of 25 out of 60. Source: *Freedom House*.

3. *Freedom of Information*: Measures the legal and practical steps taken by a government to enable or allow information to move freely through society; this includes measures of press freedom, national freedom of information laws, and the extent to which a country is shutting down social media or the internet. Pass: Score must be above the median score for the income group. Source: *Reporters Without Borders/Access Now/Centre for Law and Democracy*.

4. *Government Effectiveness*: An index of surveys and expert assessments that rate countries on the quality of public service provision; civil servants' competency and independence from political pressures; and the government's ability to plan and implement sound policies, among other things. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*.

5. *Rule of Law*: An index of surveys and expert assessments that rate countries on the extent to which the public has confidence in and abides by the rules of society; the incidence and impact of violent and nonviolent crime; the effectiveness,

independence, and predictability of the judiciary; the protection of property rights; and the enforceability of contracts, among other things. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*.

6. *Control of Corruption*: An index of surveys and expert assessments that rate countries on: “grand corruption” in the political arena; the frequency of petty corruption; the effects of corruption on the business environment; and the tendency of elites to engage in “state capture,” among other things. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*.

Encouraging Economic Freedom

1. *Fiscal Policy*: General government net lending/borrowing as a percent of gross domestic product (GDP), averaged over a three-year period. Net lending/borrowing is calculated as revenue minus total expenditure. The data for this measure comes from the IMF's World Economic Outlook. Pass: Score must be above the median score for the income group. Source: *The International Monetary Fund's World Economic Outlook Database*.

2. *Inflation*: The most recent average annual change in consumer prices. Pass: Score must be 15 percent or less. Source: *The International Monetary Fund's World Economic Outlook Database*.

3. *Regulatory Quality*: An index of surveys and expert assessments that rate countries on the burden of regulations on business; price controls; the government's role in the economy; and foreign investment regulation, among other areas. Pass: Score must be above the median score for the income group. Source: *Worldwide Governance Indicators (World Bank/Brookings)*.

4. *Trade Policy*: A measure of a country's openness to international trade based on weighted average tariff rates and non-tariff barriers to trade. Pass: Score must be above the median score for the income group. Source: *The Heritage Foundation*.

5. *Gender in the Economy*: An index that measures the extent to which laws provide men and women equal capacity to generate income or participate in the economy, including factors such as the capacity to access institutions, get a job, register a business, sign a contract, open a bank account, choose where to live, to travel freely, property rights protections, protections against domestic violence, and child marriage, among others. Pass: Score must be above the median score for the income group. Source: *Women, Business, and the Law (World Bank) and the WORLD Policy Analysis Center (UCLA)*.

6. *Land Rights and Access*: An index that rates countries on the extent to which the institutional, legal, and market framework provides secure land tenure and equitable access to land in rural areas and the extent to which men and women have the right to private property in practice and in law. Pass: Score must be above the median score for the income group. Source: *The International Fund for Agricultural Development and Varieties of Democracy Index*.

7. *Access to Credit*: An index that ranks countries based on access and use of formal and informal financial services as measured by the number of bank branches and ATMs per 100,000 adults and the share of adults that have an account at a formal or informal financial institution. Pass: Score must be above the median score for the income group. Source: *Financial Development Index (International Monetary Fund) and Findex (World Bank)*.

8. *Employment Opportunity*: Measures a country government's commitment to ending slavery and forced labor, preventing employment discrimination, and protecting the rights of workers and people with disabilities. Pass: Score must be above the median score for the income group. Sources: *Varieties of Democracy Institute and WORLD Policy Analysis Center (UCLA)*.

Investing in People

1. *Health Expenditures*: Total current expenditures on health by government (excluding funding sourced from external donors) at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: *The World Health Organization*.

2. *Education Expenditures*: Total expenditures on education by government at all levels divided by GDP. Pass: Score must be above the median score for the income group. Source: *The United Nations Educational, Scientific and Cultural Organization and National Governments*.

3. *Natural Resource Protection*: Assesses a country government's commitment to preserving biodiversity and natural habitats, responsibly managing ecosystems and fisheries, and engaging in sustainable agriculture. Pass: Score must be above the median score for the income group. Source: *Yale Center for Environmental Law and Policy and The Center for International Earth Science Information Network*.

4. *Immunization Rates*: The average of DPT3 and measles immunization coverage rates for the most recent year available. Pass: Score must be above either the median score for the income group or 90 percent, whichever is lower. Source: *The World Health Organization and the United Nations Children's Fund*.

5. *Girls Education*:

a. *Girls' Primary Completion Rate*: The number of female students enrolled in the last grade of primary education minus repeaters divided by the population in the relevant age cohort (gross intake ratio in the last grade of primary). Countries with a GNI/capita of \$2,165 or less are assessed on this indicator. Pass: Score must be above the median score for the income group. Source: *United Nations Educational, Scientific and Cultural Organization*.

b. *Girls' Secondary Completion Rate*: Countries with a GNI/capita between \$2,166 and \$4,515 are assessed on the number of female pupils that have completed the last grade of lower secondary education divided by the population within three to five years of the intended age of completion, expressed as a percentage of the total population of females in the same age group. Countries with a GNI/capita of between \$4,516 and

\$7,895 will be assessed on the number of female pupils that have completed the last grade of upper secondary education divided by the population within three to five years of the intended age of completion, expressed as a percentage of the total population of females in the same age group, if the Millennium Challenge Corporation Candidate Country Reform Act or legislation that similarly reforms the threshold for MCC's candidate pool were to become law. Pass: Score must be above the median score for the income group. Source: *United Nations Educational, Scientific and Cultural Organization*.

6. *Child Health*: An index made up of three indicators: (i) access to improved water, (ii) access to improved sanitation, and (iii) child (ages 1–4) mortality. Pass: Score must be above the median score for the income group. Source: *The Center for International Earth Science Information Network and the Yale Center for Environmental Law and Policy*.

Relationship to Statutory Criteria

Within each policy category, the Act sets out a number of specific selection criteria. A set of objective and quantifiable policy indicators is used to inform eligibility decisions for assistance and to measure the relative performance by candidate countries against these criteria. The Board's approach to determining eligibility ensures that performance against each of these criteria is assessed by at least one of the objective indicators. The specific indicators appear in parentheses next to the corresponding criterion set out in the Act.

Section 607(b)(1): Just and democratic governance, including a demonstrated commitment to—

(A) promote political pluralism, equality and the rule of law (*Political Rights, Civil Liberties, Rule of Law, and Gender in the Economy*);

(B) respect human and civil rights, including the rights of people with disabilities (*Political Rights, Civil Liberties, Employment Opportunity, and Freedom of Information*);

(C) protect private property rights (*Civil Liberties, Regulatory Quality, Rule of Law, and Land Rights and Access*);

(D) encourage transparency and accountability of government (*Political Rights, Civil Liberties, Freedom of Information, Control of Corruption, Rule of Law, and Government Effectiveness, Employment Opportunity*);

(E) combat corruption (*Political Rights, Civil Liberties, Rule of Law, Freedom of Information, and Control of Corruption*); and

(F) the quality of the civil society enabling environment (*Civil Liberties, Freedom of Information, Employment Opportunity, and Rule of Law*).

Section 607(b)(2): Economic freedom, including a demonstrated commitment to economic policies that—

(A) encourage citizens and firms to participate in global trade and international capital markets (*Fiscal Policy, Inflation, Trade Policy, and Regulatory Quality*);

(B) promote private sector growth (*Inflation, Fiscal Policy, Land Rights and*

Access, Access to Credit, Gender in the Economy, and Regulatory Quality);

(C) strengthen market forces in the economy (*Fiscal Policy, Inflation, Trade Policy, Land Rights and Access, Access to Credit, and Regulatory Quality*); and

(D) respect worker rights, including the right to form labor unions (*Employment Opportunity, Civil Liberties, and Gender in the Economy*).

Section 607(b)(3): Investments in the people of such country, particularly women and children, including programs that—

(A) promote broad-based primary education (*Girls' Primary Education Completion Rate, Girls' Lower Secondary Education Completion Rate, Education Expenditures, and Employment Opportunity*);

(B) strengthen and build capacity to provide quality public health and reduce child mortality (*Immunization Rates, Health Expenditures, and Child Health*); and

(C) promote the protection of biodiversity and the transparent and sustainable management and use of natural resources (*Natural Resource Protection*).

Appendix D: Subsequent and Concurrent Compact Considerations

MCC reporting and data in the following chart are used to assess threshold program performance, compact performance of MCC compact countries nearing the end of compact implementation (*i.e.*, within 18 months of compact end date), or for current MCC compact countries under consideration for a concurrent compact, where appropriate. Some reporting used for assessment may contain sensitive information and adversely affect implementation or MCC-partner country relations. This information is for MCC's internal use and is not made public. However, key implementation information is summarized in compact status and results reports that are published quarterly on MCC's website under MCC country programs (www.mcc.gov/where-we-work) and monitoring and evaluation (www.mcc.gov/our-impact/m-and-e) web pages.

For completed compacts, additional information is used to assess compact performance and is found in a country's "Star Report." The Star Report and its

associated annual business process capture key information to provide a framework for results and improve the ability to disseminate learning and evidence throughout the lifecycle of an MCC investment from selection to final evaluation. For each compact and threshold program, evidence is collected on performance indicators, evaluation results, partnerships, sustainability efforts, and learning, among other elements.

In addition to the Star Reports, MCC also surveys staff on topics related to the quality of the partnership during design and implementation of programs, progress toward program results, a partner country's commitment to undertaking policy and institutional reforms, and compliance with MCC standards. Additional information on the survey can be found in the Guide to the Program Surveys: <https://www.mcc.gov/resources/doc/guide-to-program-surveys-fy23>.

Topic	MCC reporting/data source	Published documents
Country Partnership		
Political Will: - Status of major conditions precedent. - Program oversight/implementation: - project restructures; - partner response to accountable entity capacity issues. - Political independence of the accountable entity. Management Capacity: - Project management capacity. - Project performance. - Level of MCC intervention/oversight. - Relative level of resources required.	- Quarterly implementation reporting. - Quarterly results reporting. - MCC Star Reports.	- Quarterly results published as "Table of Key Performance Indicators" (available by country): https://www.mcc.gov/itt. - Star Reports (available by country): https://www.mcc.gov/starreport/.
Program Results		
Financial Results: - Commitments—including contributions to compact and threshold funding. - Disbursements. Project Results: - Output, outcome, objective targets. - Accountable entity commitment to 'focus on results'. - Accountable entity cooperation on impact evaluation. - Percent complete for process/outputs. - Relevant outcome data. - Details behind target delays. Target Achievements.	- Indicator tracking tables. - Quarterly financial reporting. - Quarterly implementation reporting. - Quarterly results reporting. - Impact evaluations. - MCC Star Reports.	- Monitoring and Evaluation Plans (available by country): https://www.mcc.gov/meplan/. - Quarterly results published as "Table of Key Performance Indicators" (available by country): https://www.mcc.gov/itt. - Star Reports (available by country): https://www.mcc.gov/starreport/.
Adherence to Standards		
- Procurement. - Environmental and social. - Fraud and corruption. - Program closure. - Monitoring and evaluation. - All other legal provisions.	- Audits (GAO and OIG). - Quarterly implementation reporting. - MCC Star Reports.	- Published OIG and GAO audits. - Star Reports (available by country): https://www.mcc.gov/starreport/.
Country Specific		
Sustainability: - Implementation entity. - MCC investments. Role of private sector or other donors: - Other relevant investors/investments. - Other donors/programming. - Status of related reforms. - Trajectory of private sector involvement going forward.	- Quarterly implementation reporting. - Quarterly results reporting. - MCC Star Reports.	- Quarterly results published as "Table of Key Performance Indicators" (available by country): https://www.mcc.gov/itt. - Star Reports (available by country): https://www.mcc.gov/starreport/.

[FR Doc. 2024-21969 Filed 9-24-24; 8:45 am]

BILLING CODE 9211-03-P

NATIONAL CREDIT UNION ADMINISTRATION

Revision of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act of 1995, The National Credit Union Administration (NCUA) is submitting the following extensions and revisions of currently approved collections to the Office of Management and Budget (OMB) for renewal.

DATES: Written comments should be received on or before October 25, 2024 to be assured consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dacia Rogers at (703) 518-6547, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133-0193.

Title: Joint Standards for Assessing the Diversity Policies and Practices.

Type of Review: Revision of a currently approved collection.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Act) instructed each agency Office of Minority and Women Inclusion (OMWI) director to develop standards for assessing the diversity policies and practices of entities regulated by each agency. The Agencies worked together to develop joint standards and publish a policy statement in the **Federal Register**. The Policy Statement contains a collection of information. The NCUA 15004, "Annual Voluntary Credit Union Diversity Self-Assessment," can be used by federally insured credit unions to perform their assessment and to submit information to NCUA.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 500.

Estimated Hours per Response: 2.

Estimated Total Annual Burden Hours: 1,000.

Reason for Change: The number of respondents increased, and the annual burden hours decreased.

OMB Number: 3133-0092.

Title: Loans to Members and Lines of Credit to Members, 12 CFR 701.21 and App. B to 741.

Type of Review: Revision of a currently approved collection.

Abstract: Section 107(5) of the Federal Credit Union Act authorizes Federal Credit Unions (FCU) to make loans to members and issue lines of credit (including credit cards) to members. Section 701.21 governs the requirements related to loans to members and lines of credit to members for FCUs. Additionally, Part 741 established requirements for all federally insured credit unions (both Federal and state charters) related to loans to members and lines of credit union members. NCUA reviews the information collections to ensure compliance with applicable regulations and laws, and to assess the safety and soundness of the credit union's lending program.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 4,533.

Estimated Number of Responses per Respondent: 39.89.

Estimated Total Annual Responses: 180,824.

Estimated Hours per Response: 0.090380702.

Estimated Total Annual Burden Hours: 16,343.

Reason for Change: The number of respondents decreased, and the estimated annual burden hours decreased.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility,

and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,
Secretary of the Board.

[FR Doc. 2024-21916 Filed 9-24-24; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Comment Request; Participatory Research and Indigenous Leadership in Research (PILR) Evaluation

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper

performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: The Interagency Arctic Research Policy Committee Principles for Conducting Research in the Arctic Evaluation Survey.

OMB Control No.: 3145–New.

Abstract: The Interagency Arctic Research Policy Committee (IARPC) was established by the Arctic Research and Policy Act of 1984 (ARPA) to facilitate coordination and cooperation in Arctic research. Now a subcommittee of the National Science and Technology Council (NSTC), IARPC plays a critical role in enhancing scientific monitoring and advancing Arctic research through the coordination of Federal agencies as well as domestic and international collaborators. In 2018, IARPC released the revised Principles for Conducting Research in the Arctic OPP Principles for the Conduct of Research in the Arctic | NSF—National Science Foundation (<https://www.nsf.gov/geo/opp/arctic/conduct.jsp>) to guide research activities throughout the Arctic. In 2023, the IARPC's Participatory Research and Indigenous Leadership in Research (PILR) Collaboration Team (one of five foundational activities in the Arctic Research Plan—IARPC Collaborations) (<https://www.iarpccollaborations.org/plan/index.html>) reframed these principles as SHARE:

- Sustain and build relationships
- Humble accountability
- Advance responsible environmental stewardship

- Effective communication

These Principles are directed at academic and federal researchers funded by IARPC agencies but are equally relevant to other individuals and organizations pursuing or funding research in the Arctic. They are guidelines for conducting responsible and ethical research and they encourage respect for all individuals, cultures, and the environment. The Principles are not intended to supplant existing regulations and guidelines; researchers should follow federal, state, and local regulations, policies and guidelines. Research involving human subjects must adhere to specific requirements. Projects on Indigenous homelands or involving Indigenous Peoples should be coordinated with Indigenous leadership and should follow all applicable regulations and local research guidelines.

The rapid changes occurring in the Arctic are complex, dynamic, and interconnected. Climate change and other environmental changes are profoundly impacting Arctic communities and have global consequences. As a result, emerging research questions are multidisciplinary and are best addressed by multiple Federal agencies working closely with non-Federal partners. Through a targeted approach to cross-cutting priority areas, the Interagency Arctic Research Policy Committee's (IARPC) Arctic Research Plan 2022–2026 addresses the most pressing Arctic research needs that require a collaborative approach and can advance understanding of the Arctic and climate change, inform policy and planning decisions, and promote the well-being of Arctic and global communities. The plan's priority areas respond to challenges identified by Arctic communities, Federal agencies with a presence in Alaska or a responsibility to understand the Arctic region, Federal agencies with Arctic investments, the state of Alaska, Tribal and Indigenous organizations, and other non-Federal entities.

Every five years, IARPC is required by law (ARPA) “to prepare and execute an Arctic Research Plan in coordination with the U.S. Arctic Research Commission, the Governor of the State of Alaska, residents of the Arctic, the private sector, and public interest groups.” The Arctic Research Plan 2022–2026 is the third plan since IARPC became a subcommittee of the NSTC and builds from the successes and communities of practice established by previous plans. It seeks to integrate these communities and create cross-

cutting foci which require a focused research effort.

The IARPC PILR Collaboration work focuses on three objectives including PILR 1 to fulfill Federal requirement to consult with Federally recognized Tribes and Alaska Native Corporations. The IARPC Principles survey stems from PILR Deliverable 1.2 to Evaluate the Principles for Conducting Research in the Arctic 2018, and update as needed based on the evaluation. This survey will enable an evaluation of understanding and implementation of the SHARE Principles among three primary groups, Arctic Indigenous and local community members and leadership, the scientific research community, and federal agency personnel.

Respondents: Arctic Indigenous and local community members and leadership (100); scientific research community (100), and federal agency personnel (100).

Estimated Number of Annual Respondents: 300.

Burden on the Public: Estimated 20 minutes to fill out the form. The estimated burden time is 102 hours.

Dated: September 20, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–21973 Filed 9–24–24; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334, 50–412; 50–346, and 50–440; NRC–2024–0127]

Vistra Operations Company, LLC; Beaver Valley Power Station, Units 1 and 2; Davis-Besse Nuclear Power Station, Unit 1; Perry Nuclear Power Plant, Unit 1; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption in response to a request dated February 23, 2024, as supplemented on August 15, 2024, seeking an exemption from specific regulations that require periodic updates to the Updated Final Safety Analysis Reports (UFSARs) for the Beaver Valley Power Station (BVPS), Units 1 and 2, Davis-Besse Nuclear Power Station, (DBNPS) Unit 1, and Perry Nuclear Power Plant (PNPP), Unit 1. The initial request was submitted by Energy Harbor Nuclear Corp. Effective

March 1, 2024, the facility operating licenses for BVPS, Units 1 and 2, DBNPS, Unit 1, and PNPP, Unit 1, were transferred from Energy Harbor Nuclear Corp. (operator) to Vistra Operations Company, LLC (operator). The ownership of these units by Energy Harbor Nuclear Generation, LLC was not affected by the transfer. Upon completion of this license transfer, Vistra Operations Company, LLC assumed the responsibility for all licensing actions under NRC review at the time of the transfer and requested that the NRC continue its review of these actions.

DATES: The exemption was issued on September 17, 2024.

ADDRESSES: Please refer to Docket ID NRC-2024-0127 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2024-0127. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointments. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Kuntz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3733, email: Robert.Kuntz@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: September 19, 2024.

For the Nuclear Regulatory Commission.

Robert F. Kuntz,

Senior Project Manager, Plant Licensing Branch 3, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-334, 50-412, 50-346, and 50-440]

Vistra Operations Company, LLC; Beaver Valley Power Station, Units 1 and 2, Davis-Besse Nuclear Power Station, Unit 1, Perry Nuclear Power Plant, Unit 1; Exemptions

I. Background

Vistra Operations Company, LLC (VistraOps, the licensee) is the holder of Facility Operating License Nos. DPR-66, NPF-73, NPF-3, and NPF-58, for Beaver Valley Power Station (BVPS), Units 1 and 2; Davis-Besse Nuclear Power Station (DBNPS) Unit 1; and Perry Nuclear Power Plant (PNPP) Unit 1, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect. The BVPS, Units 1 and 2; and DBNPS, Unit 1, facilities consist of pressurized-water reactors (PWRs) located along the Ohio River in Beaver Valley, PA and in Ottawa County, OH, respectfully. The PNPP, Unit 1, is a boiling-water reactor (BWR) located near Lake Erie in Lake County, Ohio.

II. Request/Action

Section 50.71 of title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making of reports," paragraph (e)(4) states, in part, "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR) submitted as part of the original license application] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months."

By letter dated February 23, 2024 (ADAMS Accession No. ML24054A101), Energy Harbor Corporation requested that the due date for submittal of the BVPS, Unit 1, UFSAR be by May 31 of every even-numbered year, provided the interval between successive updates does not exceed 24 months. Similarly, for BVPS, Unit 2, the UFSAR update would be due by May 31 of every odd-numbered year; for PNPP, Unit 1, the

UFSAR update would be due by September 30 of every odd-numbered year; and for DBNPS, Unit 1, the UFSAR update would be due by September 30 of every even-numbered year, provided the interval between successive updates does not exceed 24 months for each unit. This proposal differs from the requirements these units are currently subject to. As explained in the request for exemptions:

Currently, BVPS, Units 1 and 2 are on 18-month staggered refueling cycles while PNPP and DBNPS are on 24-month refueling cycles. Based on the applicable refueling cycle, PNPP and DBNPS perform UFSAR updates approximately every 24 months while BVPS Units 1 and 2 perform updates approximately every 18 months. The exemption will provide for a set calendar schedule for each of the Energy Harbor Nuclear Corp. plants, which would allow more efficient scheduling and allocation of resources to prepare and submit UFSAR updates while remaining within the maximum allowed 24 months between successive updates.

Effective March 1, 2024 (ML24057A092), the facility operating licenses for BVPS, Units 1 and 2, DBNPS, Unit 1, and PNPP, Unit 1, were transferred from Energy Harbor Nuclear Corp. (operator) to Vistra Operations Company LLC (operator). The ownership of these units by Energy Harbor Nuclear Generation LLC was not affected by the transfer. Upon completion of this license transfer, VistraOps assumed the responsibility for all licensing actions under NRC review at the time of the transfer and requested that the NRC continue its review of these actions (ML24054A498). VistraOps submitted a supplement to the exemption requests on August 15, 2024 (ML24228A213).

III. Discussion

Pursuant to 10 CFR 50.12, the NRC may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR, part 50, including 10 CFR 50.71(e)(4) when: (1) the exemptions are authorized by law, will not present an undue risk to the public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. Under 10 CFR 50.12(a)(2), special circumstances include, among other things, when application of the specific regulation in the particular circumstances would not serve, or is not necessary to achieve, the underlying purpose of the rule.

A. The Exemptions Are Authorized by Law

In accordance with 10 CFR 50.12, the NRC may grant an exemption from the requirements of 10 CFR part 50 if the

exemption is authorized by law. The proposed exemptions are authorized by law as no other prohibition of law exists that would preclude the activities that would be authorized by the exemptions. The NRC staff has determined that granting the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

B. The Exemptions Present No Undue Risk to Public Health and Safety

The proposed exemptions will not alter the manner in which changes to the UFSAR are evaluated in that changes to the UFSAR will continue to be reviewed through the existing applicable administrative and programmatic control processes to ensure that UFSAR changes are properly evaluated and implemented.

Licensees are required, in accordance with 10 CFR 50.71(e)(4), to periodically submit their UFSARs and modifying the schedule for periodic submittal does not alter plant design or operation. Therefore, the exemptions do not present an undue risk to the public health and safety.

C. The Exemptions Are Consistent With the Common Defense and Security

The proposed exemptions have no impact on the BVPS, Units 1 and 2, DBNPS, and PNPP physical security plan or the ability to protect special nuclear material at BVPS, Units 1 and 2, DBNPS, and PNPP. Therefore, the exemptions are consistent with the common defense and security.

D. Special Circumstances

In accordance with 10 CFR 50.12(a)(2)(ii), special circumstances exist when compliance is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.71(e)(4) is to ensure that licensees periodically submit their UFSARs to assure that the UFSAR remains up to date while reflecting the plant design and operation. Specifically, when the requirement to provide an UFSAR update was first promulgated (May 9, 1980; 45 FR 30614), the Commission explained that it was establishing the requirement "to provide an updated reference document to be used in recurring safety analyses performed by the licensee, the Commission, and other interested parties." That rule required updating on an annual basis. In a 1992 final rule that had the purpose of reducing regulatory burden on licensees (August 31, 1992; 57 FR 39353), the Commission provided an alternative to

annual updating, in which licensees could provide updates "6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months." In a response to a comment suggesting that the FSAR update be decoupled from the refueling cycle, the Commission explained in the final rule (57 FR 39354), "The majority of facility design changes reflected in an updated FSAR are effected during the refueling outage. The use of the refueling cycle interval provides for a current plant status document that is coordinated with plant changes."

As required by 10 CFR 50.71(e)(4) a maximum time of 24 months between successive updates and the requirement to reflect changes to the UFSAR up to a maximum of 6 months prior to the date of filing is allowed. The processing and submittal of more frequent revisions to the UFSAR, including all documents incorporated by reference, is not necessary to achieve the underlying purpose of the rule. The BVPS, Units 1 and 2, DBNPS, and PNPP routine UFSAR submittals will not exceed the maximum 24 months between submission. Further, as noted in the licensee's submittal dated August 15, 2024, the majority of facility design changes reflected in the UFSAR for the affected reactors are no longer effected during the refueling outage. Therefore, the submittals will continue to contain timely updates to the NRC as required by 10 CFR 50.71(e)(4). Furthermore, tying the processing and submittal of the UFSAR to the refueling cycle is not necessary to achieve the underlying purpose of the rule as the majority of the facility design changes are not implemented during refueling outages and therefore tying the UFSAR submittal to the refueling cycle is not necessary to provide a current plant status document coordinated with plant changes. Therefore, special circumstances exist under 10 CFR 50.12(a)(2)(ii) in that application of the requirements in these particular circumstances are not necessary to achieve the underlying purpose of the rule.

E. Environmental Considerations

With respect to the impact of the exemptions on the quality of the human environment, the NRC has determined that the issuance of the exemptions discussed herein meets the eligibility criteria for categorical exclusion from the requirement to prepare an environmental assessment or environmental impact statement, set forth in 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of 10 CFR chapter I (which includes 10 CFR 50.71(e)(4)) is an action that is a categorical exclusion, provided that certain specified criteria are met. The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve no significant hazards consideration. The criteria for determining whether an action involves a significant hazards consideration are found in 10 CFR 50.92. The proposed action involves only a schedule change regarding the submission of an update to the UFSAR. As set forth in that regulation, there are no significant hazard considerations because granting the exemptions would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Requirements in 10 CFR 51.22(c)(25)(ii)

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(ii) that there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite. The proposed action involves only a schedule change, which is administrative in nature, and does not involve any changes in the types or increase in the amounts of any effluents that may be released offsite.

Requirements in 10 CFR 51.22(c)(25)(iii)

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(iii) that there is no significant increase in individual or cumulative public or occupational radiation exposure. Since the proposed action involves only a schedule change, which is administrative in nature, it does not contribute to any significant increase in individual or cumulative public or occupational radiation exposures.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(iv) that there is no significant construction impact. Since the proposed action involves only a schedule change related to the timing for submittal of UFSAR updates, which is administrative in nature, it does not involve any construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(v) that there is no significant increase in the potential for or consequences from radiological accidents. The proposed action involves only a schedule change related to the timing for submittal of UFSAR updates, which is administrative in nature and does not impact the potential for or consequences from radiological accidents.

Requirements in 10 CFR 51.22(c)(25)(vi)

The exemption satisfies the criterion in 10 CFR 51.22(c)(25)(vi)(B) and 51.22(c)(25)(vi)(G) because the requirements from which the exemption is sought involve reporting and scheduling requirements, specifically the required schedule for submittal of UFSAR updates to the NRC pursuant to 10 CFR 50.71(e)(4).

Based on the above, the NRC staff concludes that the proposed exemptions meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of these exemptions.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii) are present. Therefore, the Commission hereby grants VistraOps the following exemptions from the requirements of 10 CFR 50.71(e)(4) to allow VistraOps to file its periodic updates: to the BVPS, Unit 1, UFSAR by May 31 of every even-numbered year, to the BVPS, Unit 2, UFSAR by May 31 of every odd-numbered year, to the PNPP, Unit 1, UFSAR by September 30 of every odd-numbered year, and to the DBNPS, Unit 1, UFSAR by September 30 of every even-numbered year, provided the interval between successive updates does not exceed 24 months for each unit.

The exemptions are effective upon issuance.

Dated: September 17, 2024.

For the Nuclear Regulatory Commission.
/RA/
Bo Pham,

Director, Division of Operating Reactor
Licensing, Office of Nuclear Reactor
Regulation.

[FR Doc. 2024-21856 Filed 9-24-24; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024-691 and CP2024-700; MC2024-692 and CP2024-701; MC2024-693 and CP2024-702; MC2024-694 and CP2024-703; MC2024-695 and CP2024-704; MC2024-696 and CP2024-705; MC2024-697 and CP2024-706; MC2024-698 and CP2024-707; MC2024-699 and CP2024-708; MC2024-700 and CP2024-709]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 25, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an

officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2024-691 and CP2024-700; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 345 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 25, 2024.

2. *Docket No(s):* MC2024-692 and CP2024-701; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 346 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 17, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alain Brou; *Comments Due:* September 25, 2024.

3. *Docket No(s):* MC2024-693 and CP2024-702; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 347 to Competitive Product List and Notice of Filing Materials

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Samuel Robinson; *Comments Due*: September 25, 2024.

4. *Docket No(s)*: MC2024–694 and CP2024–703; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 348 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: September 25, 2024.

5. *Docket No(s)*: MC2024–695 and CP2024–704; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 352 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: September 25, 2024.

6. *Docket No(s)*: MC2024–696 and CP2024–705; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 353 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: September 25, 2024.

7. *Docket No(s)*: MC2024–697 and CP2024–706; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 349 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jana Slovinska; *Comments Due*: September 25, 2024.

8. *Docket No(s)*: MC2024–698 and CP2024–707; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 350 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Almaroof Agoro; *Comments Due*: September 25, 2024.

9. *Docket No(s)*: MC2024–699 and CP2024–708; *Filing Title*: USPS Request to Add Priority Mail Express, Priority

Mail & USPS Ground Advantage Contract 351 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Katalin K. Clendenin; *Comments Due*: September 25, 2024.

10. *Docket No(s)*: MC2024–700 and CP2024–709; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 352 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 17, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: September 25, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–21933 Filed 9–24–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–708 and K2024–1; MC2024–709 and K2024–2; MC2024–710 and K2024–3; MC2024–711 and K2024–4; MC2024–712 and K2024–5; MC2024–713 and K2024–6; MC2024–714 and K2024–7; MC2024–715 and K2024–8; MC2024–716 and K2024–9; MC2024–717 and K2024–10]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission’s consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 27, 2024.

ADDRESSES: Submit comments electronically via the Commission’s Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

II. Docketed Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request’s acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service’s request(s) can be accessed via the Commission’s website (<http://www.prc.gov>). Non-public portions of the Postal Service’s request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service’s request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2024–708 and K2024–1; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 359 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

3035.105, and 3041.310; *Public Representative*: Christopher C. Mohr; *Comments Due*: September 27, 2024.

2. *Docket No(s)*: MC2024–709 and K2024–2; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 360 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Kenneth R. Moeller; *Comments Due*: September 27, 2024.

3. *Docket No(s)*: MC2024–710 and K2024–3; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 361 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Jennaca D. Upperman; *Comments Due*: September 27, 2024.

4. *Docket No(s)*: MC2024–711 and K2024–4; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 362 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: September 27, 2024.

5. *Docket No(s)*: MC2024–712 and K2024–5; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 363 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: September 27, 2024.

6. *Docket No(s)*: MC2024–713 and K2024–6; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 355 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Kenneth R. Moeller; *Comments Due*: September 27, 2024.

7. *Docket No(s)*: MC2024–714 and K2024–7; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 356 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: September 27, 2024.

8. *Docket No(s)*: MC2024–715 and K2024–8; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 364 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Samuel Robinson; *Comments Due*: September 27, 2024.

9. *Docket No(s)*: MC2024–716 and K2024–9; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 365 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Kenneth R. Moeller; *Comments Due*: September 27, 2024.

10. *Docket No(s)*: MC2024–717 and K2024–10; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 357 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 19, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 3041.310; *Public Representative*: Almaroof Agoro; *Comments Due*: September 27, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–21961 Filed 9–24–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–701 and CP2024–710; MC2024–702 and CP2024–711; MC2024–703 and CP2024–712; MC2024–704 and CP2024–713; MC2024–705 and CP2024–714; MC2024–706 and CP2024–715; MC2024–707 and CP2024–716]

New Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 26, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact

the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405,¹ the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.²

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39

¹ 39 CFR part 3041 is effective as of the date of this Notice. See Docket No. RM2023–5, Final Order Amending Rules Regarding Competitive Negotiated Service Agreements, August 9, 2024 (Order No. 7353); 89 FR 67292, August 20, 2024. The Postal Service requests listed in this notice were accepted for filing prior to the effective date of 39 CFR part 3041. See Section II., *infra*. Accordingly, the requests reference now-superseded filing authority. See *id.*; 39 CFR 3010.102(d)(1).

² See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2024–701 and CP2024–710; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 353 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Samuel Robinson; *Comments Due*: September 26, 2024.

2. *Docket No(s)*: MC2024–702 and CP2024–711; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 354 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Samuel Robinson; *Comments Due*: September 26, 2024.

3. *Docket No(s)*: MC2024–703 and CP2024–712; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 355 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: September 26, 2024.

4. *Docket No(s)*: MC2024–704 and CP2024–713; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 356 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: September 26, 2024.

5. *Docket No(s)*: MC2024–705 and CP2024–714; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 357 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through

3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: September 26, 2024.

6. *Docket No(s)*: MC2024–706 and CP2024–715; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 354 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Samuel Robinson; *Comments Due*: September 26, 2024.

7. *Docket No(s)*: MC2024–707 and CP2024–716; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 358 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 18, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: September 26, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–21851 Filed 9–24–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Monday, September 30, 2024, at 3 p.m. EST.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L’Enfant Plaza, SW.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Meeting of the Board of Governors

Monday, September 30, 2024, at 3 p.m. EST

1. Strategic and Financial Matters.
2. Administrative Items.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L’Enfant Plaza SW, Washington, DC

20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,
Secretary.

[FR Doc. 2024–22039 Filed 9–23–24; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101098; File No. SR–NASDAQ–2024–055]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Definition of Nasdaq Options Trade Outline

September 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 6, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to codify the definition of Nasdaq Options Trade Outline in the Nasdaq rulebook. This filing also incorporates previously proposed fee changes that: (i) adjusted fees for Nasdaq Options Trade Outline for both the End of Day and Intra-Day product; (ii) reduced fees for 36 months of historical data for current customers; and (iii) allowed unlimited external distribution of Nasdaq Options Trade Outline for a fixed monthly fee.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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

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

1. Purpose

The purpose of the proposed rule change is to codify the definition of Nasdaq Options Trade Outline in the Nasdaq rulebook. This filing also incorporates previously proposed fee changes that: (i) adjusted fees for Nasdaq Options Trade Outline for both the End of Day and Intra-Day product; (ii) reduced fees for 36 months of historical data for current customers; and (iii) allowed unlimited external distribution of Nasdaq Options Trade Outline for a fixed monthly fee.³

Nasdaq Options Trade Outline

Nasdaq Options Trade Outline ("NOTO" or "Trade Outline") provides aggregate quantity and volume information for trades on the Exchange for all series⁴ during a trading session.⁵ Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open

a position,⁶ characterized by origin type (Customer,⁷ Broker-Dealer,⁸ Market Maker,⁹ Firm,¹⁰ and Professional¹¹), and for Customers and Professionals, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹² characterized by origin type, (Customer, Broker-Dealer, Market Maker, Firm and Professional), and for Customers and Professionals, further subdivided by trade size buckets.

NOTO will also provide opening buy, closing buy, opening sell and closing sell information, which shall include option first trade price, option high trade price, option low trade price, and option last trade price.

End of Day information is available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information is available upon request.

Trade Outline provides proprietary Exchange trade data and does not

include any intraday trade data from any other exchange.¹³ The information provided, both in End of Day and Intraday formats, is not a real-time data feed.

Trade Outline is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

Trade Outline is available to all market participants, including both members and non-members, for all series and symbols in End of Day, Intra-Day, and historical files (upon request).

Trade Outline is designed to enhance the ability of customers to understand market sentiment on the Exchange and to create and test trading models and analytical strategies useful in both options and equities markets. It is not necessary to execute a trade, but it supplies the customer with information about underlying market trends designed to improve the quality of that customer's investment decisions. Customers can, and often do, elect to forego this type of information.

The End of Day product includes aggregate data representing the entire trading session. It is calculated during an overnight process with the additional fields described above after each trading session and is available to subscribers for download the following morning at approximately 7 a.m., ET. The monthly subscriber fee for the End of Day product subscribers is currently \$500. This fee was established in 2011 and has not been changed since.¹⁴

The Intra-Day product provides periodic, cumulative data for a particular trading session. The Intra-Day product is produced and updated every ten minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within 2 minutes of the conclusion of each 10 minute period. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots." The monthly subscriber fee for the Intra-Day product is \$750. This fee was established in 2011 and has not been changed since then.¹⁵

Historic data is also available on a calendar month basis. This data is intended to enhance a purchaser's ability to analyze option trade and

⁶ An opening purchase transaction is an Exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. Nasdaq Options Trade Outline will also provide subscribers with the aggregate number of "opening writing transactions." An opening writing transaction is an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.

⁷ The term "Customer" applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(a)(47)). See Options 7, Section 1(a).

⁸ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(a).

⁹ The term "NOM Market Maker" is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. See Options 7, Section 1(a).

¹⁰ The term "Firm" applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. See Options 7, Section 1(a).

¹¹ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). See Options 7, Section 1(a).

¹² A closing purchase transaction is an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. Nasdaq Options Trade Outline will also provide subscribers with the aggregate number of "closing sale transactions." A closing sale transaction is an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.

¹³ The End of Day report includes a field that presents Total Industry Volume for the Series.

¹⁴ See Securities Exchange Act Release No. 65836 (November 28, 2011), 76 FR 75593 (December 2, 2011) (SR-Nasdaq-2011-153) (establishing fees for Nasdaq Options Trade Outline).

¹⁵ See *id.*

³ The previously introduced fee proposal was initially filed on July 1, 2024, as SR-Nasdaq-2024-034. On July 15, 2024, that filing was withdrawn and refiled as SR-Nasdaq-2024-040. On July 29, 2024, that filing was withdrawn and refiled as SR-Nasdaq-2024-043. On August 12, 2024, that proposal was withdrawn and replaced with SR-Nasdaq-2024-046 to incorporate those fees into a filing that codifies the definition of Nasdaq Options Trade Outline. On August 23, 2024, SR-Nasdaq-2024-046 was withdrawn and replaced with SR-Nasdaq-2024-051 to provide additional information and to clarify language associated with fees for historical data. On September 6, 2024, SR-Nasdaq-2024-051 was withdrawn and replaced with the instant filing to provide further information.

⁴ Every options series trades as a distinct symbol; the terms "series" and "symbol" are therefore synonyms.

⁵ See Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-Nasdaq-2011-144) (establishing Nasdaq Options Trade Outline as a product); Securities Exchange Act Release No. 65836 (November 28, 2011), 76 FR 75593 (December 2, 2011) (SR-Nasdaq-2011-153) (establishing fees for Nasdaq Options Trade Outline).

volume data, evaluate historical trends in the trading activity of a particular option series, and create and test trading models and analytical strategies. Historical files provide the same fields of information as the End of Day and Intraday files, respectively. Historical data is available starting in November 2011.

Products similar to Trade Outline have been available on multiple exchanges for many years and are well-established in the market. Such products are available from the Nasdaq Phlx LLC (“Phlx”),¹⁶ Nasdaq ISE LLC (“ISE”),¹⁷ Nasdaq GEMX LLC (“GEMX”),¹⁸ Cboe Options Exchange (“Cboe”),¹⁹ NYSE American Options (“NYSE American”),²⁰ NYSE Arca Options (“NYSE Arca”),²¹ BOX Options Market LLC (“BOX”),²² MIAx Pearl Options Exchange (“Pearl”),²³ and others. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data. The current purchasers of Trade Outline are investment banks, market makers, asset managers and other buy-side investors.

¹⁶ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

¹⁷ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intra-Day).

¹⁸ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intra-Day Trade Profile).

¹⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

²⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

²³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

Proposed Changes

Definition of Nasdaq Options Trade Outline

The Exchange proposes to codify the definition of NOTO. Nothing in this codification is intended to change the product in any way, but rather is intended to describe the product exactly as it exists. Specifically, the Exchange proposes the following definition:

Nasdaq Options Trade Outline provides aggregate quantity and volume information for trades on the Exchange for all series during a trading session. Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position, characterized by origin type (Customer, Broker-Dealer, Market Maker, Firm, and Professional), and for Customers and Professionals, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position, characterized by origin type (Customer, Broker-Dealer, Market Maker, Firm, and Professional), and for Customers and Professionals, further subdivided by trade size buckets.

Nasdaq Options Trade Outline End of Day will also provide opening buy, closing buy, opening sell and closing sell information, which shall include option first trade price, option high trade price, option low trade price, and option last trade price.

End of Day information will be available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information will be available upon request.

Previously Introduced Fee Changes

Fee Changes for End of Day and Intra-Day Products

The Exchange proposes to increase the fee for the End of Day product from \$500 to \$575, and the Intra-Day Product from \$750 to \$2,000.

In addition, the Exchange proposes to insert a comma after the phrase “or the Intra-Day Product for the current month” into the definition of Current Distributor. The revised sentence will read as follows:

A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month, in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

The change is designed to clarify that the phrase “the same month that the 36 months of historical End of Day or Intra-Day data is ordered” applies to both firms that purchase End of Day data in the current month and firms that purchase Intra-Day data for the current

month. The clarification will not change how the fee is charged.

Discount for Historical Data

The Exchange proposes to offer a discount for historical data for Current Distributors.²⁴ Specifically, the Exchange proposes to offer the most recent 36 months of historical data for current end of day product distributors for \$3,000, and the most recent 36 months of historical data for current intra-day product distributors for \$6,000. Ad-hoc requests for historical data will be at the proposed current rates of \$575 per month for End of Day data and \$2,000 per month for Intra-Day data. Historical data is currently available from the Exchange; the proposal will simply initiate a discount for the most recent 36 months of that data for Current Distributors.

Historical data, including the discounted historical data, will continue to provide the same categories of information available for current subscribers.

Eligibility for the discount will depend on the type of current subscription. A Current Distributor of End of Day data would be eligible for the historical End of Day product at the reduced rate. A Current Distributor of the Intra-Day product would be able to purchase the historical Intra-Day product at the reduced rate. A Current Distributor of both the current End of Day and Intra-Day products would be entitled to purchase both types of history at the reduced rate.

The 36-month period will be based on the date of purchase of the 36 months of data by a Current Distributor. For example, a Current Distributor that buys the End of Day product for the first time in July 2024 would also be able to purchase historical End of Day data for the period July 2021 through July 2024 (inclusive) at the discounted rate. Similarly, a Current Distributor with an existing End of Day subscription that is current in July 2024 would be able to purchase the historical End of Day data from September 2021 through September 2024 at the discounted rate. The same reasoning would apply to Intra-Day Current Distributors.²⁵ As

²⁴ A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

²⁵ A customer may use the proposed historical data discount more than once. For example, a Current Distributor that purchases 36 months of historical data at a discount, but later terminates that subscription, would be eligible to purchase another 36 months of historical data (based on the

noted, ad-hoc requests for historical data will be at the proposed current rates of \$575 per month for End of Day data and \$2,000 per month for Intra-Day data. The fees for historical data are linked to the current product because effective historical testing requires a comparison of similar products. Effective testing of the End of Day product, for example, requires End of Day historical data. The same would hold true for Intra-Day data.

Historical data is useful in analyzing option trade and volume data, evaluating historical trends in the trading activity of a particular option series, and creating and testing trading models and analytical strategies, and is often purchased concurrently with a new subscription to the Trade Outline service. Many customers use historical data to test their strategies and models, and our discussions with current and past customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

External Distribution of Derived Data

The Exchange proposes to offer a license for the unlimited external distribution of Derived Data from NOTO for \$4,000 per month. Derived Data is “any information”²⁶ generated in whole or in part from Exchange Information such that the information generated cannot be reverse engineered to recreate Exchange Information, or be used to create other data that is recognizable as a reasonable substitute for such Exchange Information.”

Fees for external distribution of Derived Data from NOTO are in addition to fees for the End of Day product or the Intra-Day product, or both, as applicable.

This is a new license to be offered by the Exchange; external distribution of Derived Data is not currently permitted. The proposal, based on a similar license offered by the Phlx exchange,²⁷ will

date of purchase) upon renewing that subscription. (Current Distributors that never terminate would have no need for a second purchase, as they would already possess the most recent months of historical data.).

²⁶ “Exchange Information” is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) Eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices; (ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

²⁷ See Securities Exchange Act Release No. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR-Phlx–2021–58).

allow the external distribution of analytic products derived from NOTO to the general investing public. A similar product is also being proposed for the Nasdaq Options Market and the ISE Exchange.

Experience with the Phlx Exchange indicates that this license provides an effective mechanism for market data vendors to identify, develop, and sell derived market data products, such as sentiment indicators, harnessing the power of the competitive marketplace to promote innovation. The Exchange expects that this product will have the greatest utility for the general investing public through broader dissemination of products with this information.

2. Statutory Basis

The Exchange believes that its proposal to codify the definition of Nasdaq Options Trade Outline is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Adding the definition of Nasdaq Options Trade Outline will provide additional clarity and specificity to the Nasdaq rulebook. Nothing in this codification is intended to change the product or the way it functions, but rather is intended to describe the product exactly as it exists today. Providing additional clarity about an exchange product will help investors make better informed decisions about NOTO, and therefore will help protect investors and promote the public interest.

Similarly, clarifying the definition of Current Distributor will also add clarity and specificity to the rulebook without changing the underlying fees. This additional clarity will help investors make better informed decisions about NOTO, and thereby help protect investors and promote the public interest.

The Exchange also believes that its proposal to change fees is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³¹ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members

and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade outline products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

As noted above, products similar to Trade Outline have been available on multiple exchanges for many years and are well-established in the market. They are available from the Phlx,³² ISE,³³ GEMX,³⁴ Cboe,³⁵ NYSE American,³⁶ NYSE Arca,³⁷ BOX,³⁸ MIAX Pearl,³⁹ and others.

Trade outline products offer the same categories of data through end of day or intra-day reports. The information provided by one exchange is generally

³² See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx–2010–121) (introducing PHOTO on September 1, 2010).

³³ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intra-Day).

³⁴ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intra-Day Trade Profile).

³⁵ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe–2022–023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

³⁶ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER–2021–46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³⁷ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca–2021–82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³⁸ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX–2023–09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

³⁹ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL–2021–24) (introducing the Open-Close Report).

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(4) and (5).

similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another exchange.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade. Customers can, and do, choose to forego the information from Trade Outline or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for trade outline.

As the Commission and courts⁴⁰ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”⁴¹ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

discriminatory.”⁴² The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁴³ Trade Outline is in direct competition with multiple exchanges that offer similar products in end of day and intra-day formats.⁴⁴

The license to allow the external distribution of Derived Data, like the purchase of the end of day and intra-day licenses, is also subject to competition. Any exchange that wishes to allow distribution of a Derived Data product based on options trading information would be able to do so with an immediately effective fee filing similar to this proposal.

Moreover, as explained above, the proposal is designed to promote the dissemination of a variety of analytical insights—generally used only by investment banks, market makers, asset managers and other buy-side investors—to the general investing public by creating an incentive for market data vendors to identify, develop, and sell such indicators. As such, the proposal will spur competition among not only exchanges, but vendors as well.

The discounted fees for historical data, like the purchase of the end of day, intra-day and Derived Data licenses, is also subject to competition. Any exchange that wishes to provide discounts for historical data would be able to do so with an immediately effective fee filing in response. Limiting the discount to the most recent 36 months of information for Current Distributors is reasonable because our discussions with current and past customers and experience indicate that 36 months of data is sufficient for most customer needs and is an effective baseline for review. Other market participants will continue to have

access to the data through ad-hoc requests. Because the sale of historical data is subject to competition, other trading venues are free to formulate different discounts.

Comparability of Proposed Fees

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of Trade Outline is determined in part by the number of underlying transactions reflected in the data. The Nasdaq Options Market has a market share comparable to MIAX Pearl, BOX Exchange and Cboe BZX, at approximately 5% to 6% during the second quarter of 2024.⁴⁵ For intra-day products, fees range from \$1,500 to \$2,000 for these exchanges. MIAX Pearl charges \$2,000,⁴⁶ BOX Exchange charges \$1,500,⁴⁷ and Cboe BZX charges \$1,500.⁴⁸ The proposed fee of \$2,000 per month for NOTO Intra-Day data is comparable to that of its competitors.

For End of day products, fees range from \$500 to \$600 for comparable exchanges. MIAX Pearl charges \$600,⁴⁹ BOX Exchange charges \$500,⁵⁰ and Cboe BZX charges \$500.⁵¹ The proposed fee of \$575 for NOTO Intra-Day data is comparable to that of its competitors.

These fees also reflect the increasing value of the Trade Outline product over time. The number of transactions executed on options exchanges has increased significantly over that time, while fees for Trade Outline have remained unchanged in nominal terms.⁵²

Nasdaq is not aware of another exchange that provides a similar

⁴⁰ The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” *NetCoalition I*, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR–NYSEArca–2006–21)).

⁴¹ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

⁴² See *id.*

⁴³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁴ These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIAX Options, Pearl, and Emerald.

⁴⁵ See *NasdaqTrader.com*, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴⁶ See MIAX Options Exchange, “Fee Schedule as of April 23, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAX_Options_Fee_Schedule_04232024.pdf.

⁴⁷ See BOX Exchange, “Fee Schedule as of June 18, 2024,” available at <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-June-18-2024.pdf>.

⁴⁸ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁴⁹ See MIAX Pearl Options Exchange, “Fee Schedule as of April 15, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAX_Pearl_Options_Fee_Schedule_04152024.pdf.

⁵⁰ BOX Exchange, “Fee Schedule as of June 18, 2024,” available at <https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-June-18-2024.pdf>.

⁵¹ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁵² See Securities Exchange Act Release No. 65836 (November 28, 2011), 76 FR 75593 (December 2, 2011) (SR–Nasdaq–2011–153) (establishing fees for Nasdaq Options Trade Outline).

discount for historical data other than its own affiliates. The Phlx exchange, which is affiliated with Nasdaq, offers the most recent 36 months of historical End of Day data to Current Distributors for \$6,000, and the most recent 36 months of Intraday data for \$12,000. The proposed Nasdaq Options Market fees of \$3,000 for 36 months of historical End of Day data and \$6,000 for 36 months of Intraday data are reasonable in comparison to Phlx because Nasdaq Options Market has a much lower market share (approximately 9% for Phlx and about 6% for Nasdaq Options Market).

If the Exchange is incorrect in its assessment of the marketplace, current and prospective customers will elect not to purchase Trade Outline.

As noted above, clarifying the definition of Current Distributor will not change fees, and therefore will not impact the equitable allocation of reasonable dues, fees and other charges.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant. On the contrary, the proposal expands distribution of Trade Outline information beyond investment banks, market makers, asset managers and other buy-side investors to market data vendors and the general investing public. Allowing the distribution of Derived Data to the general investing public will broaden the availability of such information while not treating any current recipients of the product differently in any way. The new fee structure, which modifies fees to reflect current market value and offers historical data at a discount, applies equally to all current and potential distributors.

Trade Outline is available to all market participants, including members and non-members, and all market participants receive the same information in the Trade Outline data feed.

With respect to the specific fee changes, it is reasonable and not unfair discrimination to charge an external distributor of Derived Data a \$4,000 licensing fee. Vendors will ordinarily charge a fee to their downstream customers for this service, and, even if the vendor is not charging a specific fee for this service, Derived Data products from the Exchange will be part of a suite of offerings that generally promote sales. External distribution is fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. It is not

unfair discrimination to charge a licensing fee for a product that generates downstream revenue.

Nor is it unfair discrimination to allow the redistribution of Derived Data, but not the underlying information, to the general investing public. As explained above, neither exchanges nor vendors ordinarily allow redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution in the manner of a data feed. Allowing the redistribution of Derived Data provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide access to market sentiment insights currently available only to sophisticated investors. This proposal is therefore not unfair discrimination, but rather allows for greater access to market sentiment information for the general investing public.

It is also not unfair discrimination to provide a discount for 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product. Any firm would be able to become a Current Distributor at any time by subscribing to Trade Outline, and would be able to cancel the subscription at any time after receiving the 36 months of historical data for the proposed discounted fee. More specifically, a firm that is not a Current Distributor may obtain access to the 36 months of historical data at a discount by becoming a Current Distributor for a limited time and then terminating the subscription.

It is not unfair discrimination to limit the historical data discount to Current Distributors. Historical information is generally used by Current Distributors to test their strategies and trading models, and Current Distributors are therefore in the best position to benefit from the historical data. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis. As noted, ad-hoc requests for historical data will be at the proposed current rates of \$575 per month for End of Day data and \$2,000 per month for Intra-Day data.

For all of these reasons, the proposal does not permit unfair discrimination.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly

competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Adding the definition of Nasdaq Options Trade Outline will promote competition by helping investors make better informed decisions about NOTO. Nothing about the addition of a definition will impact inter-market competition or intra-market competition negatively.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations).

As discussed above, Trade Outline is subject to direct competition from other options exchanges that offer substitutes. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-Market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis. Indeed, the proposal will foster competition by expanding dissemination of data to vendors and the general investing public, and by encouraging more market participants to use Trade Outline data to help inform their investments strategies and analytic models.

Offering the 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product, will not burden competition because non-subscribers are free to purchase a current subscription. Moreover, a firm

that is not a Current Distributor may become a Current Distributor and then cancel the product after receiving the historical discount. As such, firms that are not Current Distributors will have an opportunity to pay the same fees for the most recent 36 months of historical data as Current Distributors. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

Adding language to clarify the definition of Current Distributor will not change fees, and will promote competition by better informing investors.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵³ and Rule 19b-4(f)(6)⁵⁴ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁵⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that adding the definition of Nasdaq Options Trade

Profile will provide additional clarity and specificity to the Nasdaq rulebook, and nothing in the clarification changes the product or the way it functions, but rather describes the product exactly as it exists today. The Exchange also states that the fees included in this filing have been in effect since July 1, 2024, and waiver of the operative delay will allow application of those fees to continue uninterrupted. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁵⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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-NASDAQ-2024-055 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NASDAQ-2024-055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-055 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21870 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101106; File No. SR-NYSEAMER-2024-58]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Proprietary Market Data Fee Schedule

September 19, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 16, 2024, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been

⁵³ 15 U.S.C. 78s(b)(3)(A).

⁵⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵⁵ 17 CFR 240.19b-4(f)(6).

⁵⁶ 17 CFR 240.19b-4(f)(6)(iii).

⁵⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE American Options Proprietary Market Data Fee Schedule ("Fee Schedule") applicable to various market data products. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the Fee Schedule applicable to various market data products. More specifically, the Exchange proposes to adopt a free trial program for NYSE American options market data products, effective September 16, 2024.⁴

The Exchange proposes a one-month free trial for any firm that subscribes to a particular NYSE American options market data product for the first time. As proposed, a first-time subscriber would be any firm that has not previously subscribed to a particular NYSE American options market data product listed on the Fee Schedule. As proposed, a first-time subscriber of a particular NYSE American options market data product would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and

Redistribution Fee for that product for one calendar month. For example, a firm that currently subscribes to NYSE American Options Complex would be eligible to receive a free one-month trial of NYSE American Options Product, whether in a display-only format or for non-display use. On the other hand, a firm that currently pays an Access Fee and receives NYSE American Options Product for non-display use would not be eligible to receive a free one-month trial of NYSE American Options Product in a display-only format. The proposed free trial would be for the first full calendar month following the date a subscriber is approved to receive trial access to the particular NYSE American Options market data product. The Exchange would provide the one-month free trial for each particular product to each subscriber once.

The Exchange believes that providing a one-month free trial to Exchange real-time market data products listed on the Fee Schedule would enable potential subscribers to determine whether a particular NYSE American options market data product provides any benefit to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs subscribers would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.⁸

The Exchange believes that the proposed rule change to provide Exchange real-time market data products listed on the Fee Schedule to new customers free-of-charge for their first subscription month is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Redistributors to enlist more subscribers to subscribe to Exchange market data products to broaden the products' distribution. Making a new market data product available for free for a trial period is consistent with offerings of other exchanges. As noted above, other exchanges offer new subscribers a similar waiver of market data fees.⁹

The Exchange believes the proposal to provide Exchange real-time market data products listed on the Fee Schedule to new customers free-of-charge for their first subscription month is equitable because the free trial would apply to any first-time subscriber, regardless of the use they plan to make of the feed. As proposed, any first-time subscriber would not be charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee, or Redistribution Fee for any of the real-time market data products listed on the Fee Schedule for one calendar month. The Exchange believes it is equitable to restrict the availability of this one-month free trial to customers that have not previously subscribed to any Exchange real-time market data product, since customers who are current or previous subscribers are already familiar with the products and whether they would suit their needs.

The Exchange believes that the proposed rule change to provide for a one-month free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all firms subscribing to the Exchange's real-time market data products for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between customers that are subscribing to a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and users that are already receiving the Exchange's market data products. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and

⁴ The Exchange originally filed to amend the Fee Schedule on September 3, 2024 (SR-NYSEAMER-2024-53). SR-NYSEAMER-2024-53 was subsequently withdrawn and replaced by this filing.

⁵ See The Nasdaq Stock Market LLC ("Nasdaq") Equity 7 Pricing Schedule, Section 112(b)(1) and Cboe Exchange, Inc. Fees Schedule.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78k-1.

⁹ See note 5, *supra*.

test a new market data product. The Exchange further believes that providing a free trial for one calendar month would ease administrative burdens for data recipients to subscribe to a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time subscribers on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.¹⁰ The proposed rule change is also designed to enhance competition by providing an incentive to Redistributors to enlist new subscribers to subscribe to Exchange's real-time market data products.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and paragraph (f) thereunder. At any time within 60

days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSEAMER-2024-58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All

submissions should refer to file number SR-NYSEAMER-2024-58 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-21877 Filed 9-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101100; File No. SR-PEARL-2024-41]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule

September 19, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 9, 2024, MIAX PEARL, LLC ("MIAX Pearl" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the fee schedule (the "Fee Schedule") applicable to MIAX Pearl Equities, an equities trading facility of the Exchange.

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings>, at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ See note 5, *supra*.

¹¹ 15 U.S.C. 78s(b)(3)(A).

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to: (1) amend Sections 1(a)–(b) of the Fee Schedule to decrease the fee for executions of orders that remove liquidity from the Exchange in securities priced at or above \$1.00 per share from \$0.00295 to \$0.00285 per share for all Tapes; and (2) amend Section 1(c) of the Fee Schedule to modify one aspect of the criteria that is required for Equity Members³ to receive the Step-Up Rebate (described below) and extend the sunset period (described below). The Exchange initially filed this proposal on August 30, 2024 (SR–PEARL–2024–40). On September 9, 2024, the Exchange withdrew SR–PEARL–2024–40 and refiled this proposal.

Proposal To Decrease the Fee To Remove Liquidity in Securities Priced at or Above \$1.00 per Share

The Exchange proposes to amend Sections 1(a)–(b) of the Fee Schedule to decrease the fee for executions of orders that remove liquidity from the Exchange in securities priced at or above \$1.00 per share from \$0.00295 to \$0.00285 per share for all Tapes.

The Exchange currently charges a standard fee of \$0.00295 per share for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange for all Tapes.⁴

The Exchange now proposes to amend the Standard Rates in Section 1(a) of the Fee Schedule to decrease the fee to remove liquidity from the Exchange in securities priced at or above \$1.00 per share from \$0.00295 to \$0.00285 per share for all Tapes.

Further, the Exchange proposes to amend the Liquidity Indicator Codes and Associated Fees table in Section 1(b) of the Fee Schedule to reflect the aforementioned change. The Exchange proposes to amend the fee associated with Liquidity Indicator Codes “RA,” “Ra,” “RB,” “Rb,” “RC,” “Rc,” “RR,” “Rr,” “RT,” “Rt,” and “Rp,” from

\$0.00295 to now be \$0.00285 per share, to reflect the proposed change to the fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange in all Tapes. The Exchange does not propose to amend the fees for executions of orders in securities priced below \$1.00 per share that remove liquidity from the Exchange in all Tapes, which is currently set at 0.25% of the total dollar value of the transaction.⁵

The purpose of these proposed changes is for business and competitive reasons. The Exchange believes it is appropriate to decrease the fee to remove liquidity from the Exchange in securities priced at or above \$1.00 per share from \$0.00295 to \$0.00285 per share for all Tapes to further encourage market participants to enter liquidity removing orders on the Exchange, thereby increasing the execution opportunities for the liquidity adding orders resting on the MIAx Pearl Equities Book.⁶ The Exchange notes that the Exchange's proposed standard fee of \$0.00285 per share for executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange remains competitive with the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by other equity exchanges.⁷

Proposal To Amend the NBBO Setter Plus Table To Modify the Baseline Month and Sunset Period for the Step-Up Rebate

The Exchange proposes to amend the Step-Up Rebate in footnote #4 of the NBBO Setter Plus Table in Section 1(c) of the Fee Schedule to amend the baseline month and sunset period for Step-Up Rebate.⁸

By way of background, the NBBO Setter Plus Program (referred to in this filing as the “NBBO Program”) was implemented beginning September 1, 2023 and subsequently amended several times.⁹ In general, the NBBO Program

provides enhanced rebates for Equity Members that add displayed liquidity (“Added Displayed Volume”) in securities priced at or above \$1.00 per share in all Tapes based on increasing volume thresholds and increasing market quality levels. The NBBO Program provides the following additional incentives: (1) an NBBO Setter Additive Rebate¹⁰ applied to executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO upon entry; (2) an NBBO First Joiner Additive Rebate¹¹ applied to executions of orders in securities priced at or above \$1.00 per share that bring MIAx Pearl Equities to the established NBB or NBO; and (3) a Step-Up Rebate for Equity Members that satisfy the following requirements: (i) minimum displayed ADaV¹² as a percentage of TCV¹³ of 0.35% and (ii) an increase in the percentage of displayed ADaV as a percentage of TCV of at least 0.05% as compared to the Equity Member's February 2024 displayed ADaV percentage. Alternatively, an Equity Member may qualify for the Step-Up Rebate by satisfying the following requirements: (1) minimum displayed ADaV as a percentage of TCV of 0.35% (excluding sub-dollar volume); and (2) increase in the percentage of displayed ADaV as percentage of TCV of at least 0.05% as compared to the Equity Member's February 2024 displayed ADaV percentage (excluding sub-dollar volume). Currently, the Step-Up Rebate

(January 11, 2024), 89 FR 3488 (January 18, 2024) (SR–PEARL–2023–73); and 99695 (March 8, 2024), 89 FR 18694 (March 14, 2024) (SR–PEARL–2024–11).

¹⁰ The Exchange does not propose to amend the NBBO Setter Additive Rebate, which is an additive rebate of (\$0.0004) per share for executions of orders in securities priced at or above \$1.00 per share that set the NBB or NBO on MIAx Pearl Equities with a minimum size of a round lot. See Fee Schedule, Section 1(c). The Exchange notes that rebates are indicated by parentheses in the Fee Schedule. See the General Notes section of the Fee Schedule.

¹¹ The Exchange does not propose to amend the NBBO First Joiner Additive Rebate, which is an additive rebate of (\$0.0002) per share for executions of orders in securities priced at or above \$1.00 per share that bring MIAx Pearl Equities to the established NBB or NBO with a minimum size of a round lot. See Fee Schedule, Section 1(c).

¹² “ADaV” means average daily added volume calculated as the number of shares added per day and “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADaV and ADV are calculated on a monthly basis. “NBBO Set Volume” means the ADaV in all securities of an Equity Member that sets the NBB or NBO on MIAx Pearl Equities. See the Definitions section of the Fee Schedule.

¹³ “TCV” means total consolidated volume calculated as the volume in shares reported by all exchanges and reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. See *id.*

⁵ See Fee Schedule, Sections 1(a)–(b).

⁶ The term “MIAx Pearl Equities Book” shall mean the electronic book of orders in equity securities maintained by the System. See Exchange Rule 1901.

⁷ See e.g., MEMX LLC (“MEMX”) Equities Fee Schedule, Transaction Fees, Fee Code “R” (providing standard remove volume fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share); and Cboe EDGX Exchange, Inc. (“EDGX”), Equities Fee Schedule, Standard Rates (providing standard remove volume fee of \$0.0030 per share for executions of orders in securities priced at or above \$1.00 per share).

⁸ See Fee Schedule, Section 1(c), note #4.

⁹ See, e.g., Securities Exchange Act Release Nos. 98472 (September 21, 2023), 88 FR 66533 (September 27, 2023) (SR–PEARL–2023–45); 99318

³ The term “Equity Member” is a Member authorized by the Exchange to transact business on MIAx Pearl Equities. See Exchange Rule 1901.

⁴ See Fee Schedule, Section 1(a).

is set to expire no later than August 31, 2024 (referred to herein as the “sunset period”).

The Exchange now proposes to amend Section 1(c) of the Fee Schedule to modify one aspect of the criteria for Equity Members to receive the Step-Up Rebate and the sunset period. In particular, the Exchange proposes to amend the baseline month from February 2024 to now be July 2024. With the proposed change, Equity Members will qualify for the Step-Up Rebate by satisfying the following requirements: (i) minimum displayed ADAV as a percentage of TCV of 0.35% and (ii) an increase in the percentage of displayed ADAV as a percentage of TCV of at least 0.05% over the baseline month of July 2024.¹⁴ Alternatively, Equity Members will qualify for the Step-Up Rebate by satisfying the following requirements: (1) minimum displayed ADAV as a percentage of TCV of 0.35% (excluding sub-dollar volume); and (2) increase in the percentage of displayed ADAV as percentage of TCV of at least 0.05% over the baseline month of July 2024 (excluding sub-dollar volume).

Additionally, the Exchange proposes to amend the sunset period by extending the Step-Up Rebate until January 31, 2025 (the last trading day for the month of January 2025).¹⁵ The Exchange will issue a proposed filing and alert to market participants should the Exchange determine that the Step-Up Rebate will expire earlier than January 31, 2025 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Rebate prior to the end of the sunset period. The Exchange notes that at least one other competing equities exchange recently filed a proposal to use a more recent month (June 2024) as the baseline month comparison for one of its enhanced rebates and included a similar “sunset period”.¹⁶ Accordingly, this proposal is not new or novel.

The Exchange does not propose any other changes to the qualifying criteria for Equity Members to receive the Step-

Up Rebate. The Exchange also does not propose to amend the amount of the Step-Up rebate of (\$0.001) per share.¹⁷

The purpose of this proposed change is to update the baseline month for the Step-Up Rebate calculation to a more recent month as volume on the Exchange has changed since the Exchange last amended the Step-Up Rebate. The Exchange believes that with the updated baseline month, the Step-Up Rebate will continue to provide an incentive for Equity Members to strive for higher ADAV on the Exchange to receive the enhanced rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that this will, in turn, promote price discovery and contribute to a deeper and more liquid market, which benefits all market participants and enhances the attractiveness of the Exchange as a trading venue.

The purpose of modifying the sunset period in the Fee Schedule is to extend the sunset period for the Step-Up Rebate until January 31, 2025. This will allow Equity Members to take into account that the enhanced rebate provided by the Step-Up Rebate will be discontinued at the end of the new sunset period unless the Exchange announces otherwise and files a new proposal with the Commission.

Implementation

The proposed fee changes are immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁹ in particular, in that it is an equitable allocation of reasonable fees and other charges among its Equity Members and issuers and other persons using its facilities. The Exchange also believes that the proposal is consistent with the objectives of Section 6(b)(5)²⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly fragmented and competitive market in which market participants can readily direct their order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of sixteen registered equities exchanges, and there are a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. For the month of July 2024, based on publicly available information, no single registered equities exchange had more than approximately 15–16% of the total market share of executed volume of equities trading.²¹ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. For the month of July 2024, the Exchange represented 1.61% of the total market share of executed volume of equities trading.²² The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²³

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing

¹⁴ The Exchange will use a baseline ADAV of 0.00% of TCV for firms that become Equity Members of the Exchange after July 2024 for the purpose of the Step-Up Rebate calculation.

¹⁵ The Exchange notes that at the end of the sunset period, the Step-Up Rebate will no longer apply unless the Exchange files another 19b-4 Filing with the Commission to amend the criteria terms or update the baseline month to a more recent month.

¹⁶ See Securities Exchange Act Release No. 100469 (July 9, 2024), 89 FR 57463 (June 15, 2024) (SR-MEMX-2024-26); see also MEMX Equities Fee Schedule, Liquidity Provision Tiers, Tier 1, available at <https://info.memxtrading.com/equities-trading-resources/us-equities-fee-schedule/> (last visited August 25, 2024).

¹⁷ See Fee Schedule, Section 1(c), note #4.

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(4).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See the “Market Share” section of the Exchange’s website, available at <https://www.miaxglobal.com/> (last visited August 26, 2024).

²² *Id.*

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37499 (June 29, 2005).

levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to continue to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would continue to enhance liquidity and market quality to the benefit of all Equity Members and market participants.

Proposal To Decrease the Fee To Remove Liquidity in Securities Priced at or Above \$1.00 per Share

The Exchange believes the proposed change to decrease the fee to remove liquidity in securities priced at or above \$1.00 per share from \$0.00295 to \$0.00285 per share for all tapes is reasonable because the proposed fee remains lower than, and competitive with, the standard fee charged by competing exchanges to remove liquidity in securities priced at or above \$1.00 per share.²⁴ The Exchange further believes that the proposed change is equitably allocated and not unfairly discriminatory because the proposed fee of \$0.00285 per share for executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will apply equally to all Equity Members that remove liquidity.

Proposal To Amend the NBBO Setter Plus Table To Amend the Baseline Month and Sunset Period for the Step-Up Rebate

The Exchange believes its proposal to update the baseline month for the Step-Up Rebate is reasonable, equitably allocated and not unfairly discriminatory because volume on the Exchange has changed since the Exchange last amended the Step-Up Rebate and the Exchange now proposes to update the baseline month to a more recent month. The Exchange believes that with the updated baseline month, the Step-Up Rebate will continue to provide an incentive for Equity Members to strive for higher ADAP on the Exchange to receive the enhanced rebate for qualifying executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange. The Exchange believes that the proposal is reasonable because even with the updated baseline month, the Step-Up Rebate will continue to encourage the submission of added displayed liquidity to the Exchange, thereby promoting price discovery and contributing to a deeper and more liquid market, which benefits

all market participants and enhances the attractiveness of the Exchange as a trading venue.

The Exchange believes that the Step-Up Rebate, as modified by the proposed change to the baseline month, is reasonable, equitable and not unfairly discriminatory as the Step-Up Rebate will continue to be available to all Equity Members on an equal basis, and is reasonably designed to encourage Equity Members to maintain or increase their order flow in liquidity-adding volume. The Exchange believes this will continue to promote price discovery, enhance liquidity and market quality, and contribute to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Equity Members and market participants. The Exchange also notes that MEMX recently filed a proposal to use a more recent month (June 2024) as the baseline month for MEMX's members to receive one of its enhanced rebates.²⁵

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to extend the sunset period for the Step-Up Rebate until January 31, 2025. Unless the Exchange determines to amend or otherwise modify the Step-Up Rebate, the Step-Up Rebate will expire at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided for by the Step-Up Rebate will be discontinued at the end of sunset period unless the Exchange announces otherwise and files a new proposal with the Commission. The Exchange further notes that it will issue a proposed filing and alert to market participants should the Exchange determine that the Step-Up Rebate will expire earlier than January 31, 2025 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Rebate prior to the end of the sunset period. At least one other competing equities exchange provided a similar sunset period in its fee schedule for one of its enhanced rebates subject to a baseline month comparison with a more recent month.²⁶

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Equity Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange believes that the proposed change to decrease the fee from \$0.00295 to \$0.00285 per share for executions of orders in securities priced at or above \$1.00 per share for all Tapes will not impose any burden on intramarket competition because it represents a decrease from the current fee for such executions. The Exchange believes the proposed reduced fee will further encourage market participants to enter liquidity removing orders on the Exchange, thereby increasing the execution opportunities for the liquidity adding orders resting on the MIAAX Pearl Equities Book, thereby promoting competition on the Exchange. The proposed reduced fee for executions of orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange will apply equally to all Equity Members. Further, the Exchange notes that the Exchange's proposed reduced fee of \$0.00285 per share for executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange remains lower than, and competitive with, the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by competing equity exchanges.²⁷

The Exchange does not believe that the proposal to update the baseline month for Step-Up Rebate will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the Step-Up Rebate, as modified by this proposal, will continue to incentivize Equity Members to submit additional orders that add liquidity to the Exchange, thereby contributing to a deeper and more liquid market and promoting price discovery and market quality on the Exchange to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange.

The Exchange believes its proposal to modify the sunset period in the Fee Schedule for the Step-Up Rebate will not impose any burden on intramarket

²⁴ See *supra* note 7.

²⁵ See *supra* note 16.

²⁶ See *id.*

²⁷ See *supra* note 7.

competition not necessary or appropriate in furtherance of the purposes of the Act. With the proposed extension of the sunset period, all Equity Members may continue to qualify for the enhanced rebate provided by the Step-Up Rebate until January 31, 2025. Unless the Exchange determines to amend or otherwise modify the Step-Up Rebate, the Step-Up Rebate will be discontinued at the end of the sunset period. This will allow Equity Members to take into account that the enhanced rebate provided by the Step-Up Rebate will be discontinued at the end of sunset period unless the Exchange announces otherwise. The Exchange further notes that it will issue a proposed filing and alert to market participants should the Exchange determine that the Step-Up Rebate will expire earlier than January 31, 2025 or if the Exchange determines to amend the criteria or rate applicable to the Step-Up Rebate prior to the end of the sunset period. At least one other competing equities exchange provided a similar sunset period in its fee schedule for one of its enhanced rebates subject to a baseline month comparison with a more recent month.²⁸

For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

The Exchange believes its proposal will benefit competition as the Exchange operates in a highly competitive market. Equity Members have numerous alternative venues they may participate on and direct their order flow to, including fifteen other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15–16% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow in response to new or different pricing structures being introduced to the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates generally, including

with respect to executions of all orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange, and market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes are competitive proposals and the proposed reduce fee of \$0.00285 per share for removing liquidity in securities priced at or above \$1.00 per share remains lower than, or similar to, the standard fee to remove liquidity in securities priced at or above \$1.00 per share charged by competing equities exchanges.²⁹ Further, the proposed reduce fee to remove liquidity from securities priced at or above \$1.00 per share will apply to all Equity Members equally.

As described above, the proposed changes to modify the baseline month and extend the sunset period for the Step-Up Rebate represent a competitive proposal through which the Exchange is seeking to continue to encourage additional order flow to the Exchange through a volume-based incentive that is comparable to the criteria for volume-based incentives adopted by at least one other competing exchange which also updated its baseline month to a more recent month for a specific enhanced rebate that adds liquidity to that market.³⁰ Accordingly, the Exchange believes that its proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing incentives to market participants that achieve certain volume criteria and thresholds.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³¹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. circuit stated: “[n]o one disputes that

competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possess a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”³² Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³³ and Rule 19b-4(f)(2) thereunder³⁴ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2024-41 on the subject line.

Paper Comments

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

³² See *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSE–2006–21)).

³³ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁴ 17 CFR 240.19b-4.

²⁸ See *supra* note 16.

²⁹ See *supra* note 7.

³⁰ See *supra* note 16.

³¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

All submissions should refer to file number SR-PEARL-2024-41. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-PEARL-2024-41 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21872 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101109; File No. SR-NYSE-2024-55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Proprietary Market Data Fee Schedule To Establish an Access Fee for the NYSE Pillar Depth Data Feed

September 19, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934

(“Act”) ² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 6, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule to establish an Access Fee for the NYSE Pillar Depth data feed. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule (“Fee Schedule”). Specifically, the Exchange proposes to establish an Access Fee for the NYSE Pillar Depth (“Pillar Depth”) data feed, effective September 6, 2024.⁴

The proposed fee for Pillar Depth would be \$250 per month, provided that the market data recipient separately pays the applicable fees for the five

existing market data products underlying the Pillar Depth data feed, consistent with the existing fee structures for those market data products.

The Pillar Depth data feed is a frequency-based depth of book market data feed that provides a consolidated view of the ten (10) best price levels on both the bid and offer sides across the NYSE Group's combined limit order books for securities traded on the NYSE Group equities markets, *i.e.*, NYSE, NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), NYSE Chicago, Inc. (“NYSE Chicago”) and NYSE National, Inc. (“NYSE National”), for which the NYSE Group equities markets report quotes and trades under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan.⁵ In other words, Pillar Depth would be a compilation of limit order data that the Exchange provides to vendors and subscribers, updated no less frequently than once per second. Specifically, the Pillar Depth data feed consists of certain data elements from five market data feeds⁶—NYSE Aggregated Lite,⁷ NYSE American Aggregated Lite,⁸ NYSE Arca Aggregated Lite,⁹ NYSE Chicago Aggregated Lite¹⁰ and NYSE National Aggregated Lite.¹¹

⁵ See Securities Exchange Act Release No. 100030 (April 25, 2024), 89 FR 35260 (May 1, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Pillar Depth Data Feed) (SR-NYSE-2024-24) (“Pillar Depth Product Filing”).

⁶ Each of these data feeds are offered pursuant to preexisting and effective rules and fees filed with the Commission. This filing does not affect those rules, or the fees associated with these underlying data feeds or the ability for the Exchange, NYSE American, NYSE Arca, NYSE Chicago or NYSE National to amend the data feeds or fees associated with those data feeds pursuant to a separate rule filing.

⁷ See Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18466 (March 13, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Aggregated Lite Market Data Feed) (SR-NYSE-2024-12).

⁸ See Securities Exchange Act Release No. 99690 (March 7, 2024), 89 FR 18445 (March 13, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE American Aggregated Lite Market Data Feed) (SR-NYSEAMER-2024-14).

⁹ See Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Arca Aggregated Lite Market Data Feed) (SR-NYSEARCA-2024-22).

¹⁰ See Securities Exchange Act Release No. 99691 (March 7, 2024), 89 FR 18468 (March 13, 2024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Chicago Aggregated Lite Market Data Feed) (SR-NYSECHX-2024-08).

¹¹ See Securities Exchange Act Release No. 99715 (March 12, 2024), 89 FR 19383 (March 18, 2024)

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR-NYSE-2024-30). On July 11, 2024, the Exchange withdrew SR-NYSE-2024-30 and replaced it with SR-NYSE-2024-39. On September 6, 2024, the Exchange withdrew SR-NYSE-2024-39 and replaced it with this filing.

³⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

The Exchange, NYSE American, NYSE Arca, NYSE Chicago and NYSE National are the exclusive distributors of the five Aggregated Lite feeds from which certain data elements are taken to create the Pillar Depth data feed. By contrast, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that comprises the Pillar Depth data feed. Any entity that receives, or elects to receive, the five underlying Aggregated Lite data feeds would be able, if it so chooses, to create a data feed with the same information included in Pillar Depth and sell and distribute it to its clients so that it could be received by those clients as quickly as the Pillar Depth data feed would be received by those same clients.¹²

As proposed, the Exchange would charge a \$250 per month Access Fee for the aggregation and consolidation function that the Exchange performs in creating Pillar Depth. To obtain Pillar Depth, a market data recipient would need to pay any applicable fees for the five data feeds underlying Pillar Depth, consistent with the existing fee schedules for those market data products as previously filed with the Commission and which may be amended from time to time, including any applicable Access, Redistribution, Professional User, Non-Professional User, Non-Display or Enterprise fees. The Exchange proposes to denote the requirement for market data recipients to pay the applicable fees for the five data feeds underlying Pillar Depth in proposed footnote 3 on the Fee Schedule.

When subscribing to Pillar Depth, the underlying data feeds would be delivered in the Pillar Depth consolidated format, as described above, but charged for as if the recipient were receiving the underlying feeds directly. The Exchange notes that if a subscriber chooses to receive the five underlying feeds both separately and in the Pillar Depth format, such subscriber may be subject to additional Professional User or Non-Professional User fees to reflect the distribution of both Pillar Depth (which incorporates the five underlying data feeds) and any separate dissemination of the underlying data feeds. The Exchange believes that the proposed fees for Pillar Depth would not be lower than the cost to a vendor of creating a comparable product,

including the cost of receiving the underlying data feeds.

The Exchange notes that another market participant seeking to distribute a competing product to Pillar Depth might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location cost to a particular vendor might be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a vendor could create and offer a product similar to Pillar Depth on a cost-competitive basis.

The proposed rule change is intended to encourage market participants to subscribe to Pillar Depth by making it more affordable for prospective customers. The proposed fee change would allow the Exchange to compete more effectively with the Cboe One Premium Feed, which as described below, is a comparable market data offering to Pillar Depth.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations or others would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹³ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁴ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹⁵ in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁶ which provides that any national securities exchange

that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁷

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system “evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed” and that the SEC wield its regulatory power “in those situations where competition may not be sufficient,” such as in the creation of a “consolidated transactional reporting system.”¹⁸

The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”¹⁹

More recently, the Commission confirmed that it applies a “market-based” test in its assessment of market data fees, and that under that test: the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there

(Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE National Aggregated Lite Market Data Feed) (SR-NYSENAT-2024-06).

¹² See Pillar Depth Product Filing, *supra* note 5.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4), (5).

¹⁵ 15 U.S.C. 78k-1.

¹⁶ 17 CFR 242.603.

¹⁷ See Regulation NMS Adopting Release, 70 FR 37495, at 37499.

¹⁸ *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. Cir. 2010) (“*NetCoalition I*”) (quoting H.R. Rep. No. 94-229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

¹⁹ *Id.* at 535.

is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.²⁰

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I*, “[n]o one disputes that competition for order flow is fierce.”²¹ The court further noted that “no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,” and that an exchange “must compete vigorously for order flow to maintain its share of trading volume.”²²

As noted above, while Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²³ Indeed, today, equity trading is currently dispersed across 16 exchanges,²⁴ numerous alternative trading systems,²⁵ broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.²⁶

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020;²⁷ Members Exchange (MEMX),

which began operations as an exchange on September 29, 2020;²⁸ and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.²⁹

More specifically, in setting fees for the Pillar Depth data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange’s data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for proprietary partial depth of book market data.

The Exchange further believes that requiring market data recipients to separately pay for the five underlying data feeds to Pillar Depth is reasonable because by design, Pillar Depth represents an aggregated and consolidated version of those existing five data feeds. The Exchange notes that it is not seeking with this filing to establish fees relating to the underlying five Aggregated Lite data feeds, as those fees have been established consistent with Section 19(b)(3)(A) of the Act³⁰ and Rule 19b-4(f)(2)³¹ thereunder, and which may be amended from time to time. However, the Exchange believes it would be unfair if it did not require Pillar Depth data feed recipients to separately pay for those five feeds because otherwise, Pillar Depth data feed recipients would be receiving a data product that includes such underlying data at a lower cost than separately subscribing to the underlying data feeds. Similarly, the Exchange believes that it would be reasonable to charge separate Professional User or Non-Professional User fees if a market data recipient chooses to receive both Pillar Depth and a separate dissemination of the five underlying data feeds in a non-consolidated form.

production securities phase-in planned for August 28, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020_Production_Securities_Launching_August_28_-_Google_Docs.pdf and LTSE Market Announcement: MA-2020-025, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.

²⁸ As of October 29, 2020, MEMX is trading all NMS symbols. See <https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/>.

²⁹ See MIAX Pearl Press release, dated September 29, 2020, available here: https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f)(2).

The Exchange believes that such delivery would constitute two separate uses of the underlying data feeds and thus should be charged accordingly, consistent with the existing fee schedule for those market data products. The Exchange therefore believes that the proposed fee structure for Pillar Depth would not be lower than the cost to another party to create a comparable product, including the cost of receiving the underlying data feeds.

The Exchange notes that its proposed fee structure is similar to the fee structure for the NYSE BQT data feed.³² The NYSE BQT data feed provides best bid and offer (“BBO”) and last sale information (“Trades”) for the Exchange and its affiliates, NYSE Arca, NYSE American, NYSE Chicago and NYSE National. NYSE BQT consists of certain data elements from ten market data feeds—NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE American Trades, NYSE American BBO, NYSE Chicago Trades, NYSE Chicago BBO, NYSE National Trades and NYSE National BBO.³³ To receive NYSE BQT, a market data recipient must pay the applicable fee for the ten data feeds underlying NYSE BQT, and an Access Fee of \$250 per month.³⁴

The Exchange notes that Pillar Depth is entirely optional. The Exchange is not required to make Pillar Depth available to any customers, nor is any customer required to purchase the Pillar Depth data feed. Unlike some other data products (e.g., the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,³⁵ a customer’s decision

³² See Securities Exchange Act Release No. 73816 (December 11, 2014), 79 FR 75200 (December 17, 2014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Access Fee for the NYSE Best Quote & Trades Data Feed) (SR–NYSE–2014–64).

³³ See Securities Exchange Act Release Nos. 72750 (August 4, 2014), 79 FR 46494 (August 8, 2014) (notice—NYSE BQT); and 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (approval order—NYSE BQT) (SR–NYSE–2014–40) (“NYSE BQT Filing”). In 2018, NYSE BQT was amended to include NYSE National BBO and NYSE National Trades. See Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (SR–NYSE–2018–22). In 2019, NYSE BQT was amended to include NYSE Chicago BBO and NYSE Chicago Trades. See Securities Exchange Act Release No. 87511 (November 12, 2019), 84 FR 63689 (November 18, 2019) (SR–NYSE–2019–60).

³⁴ See Securities Exchange Act Release No. 82121 (November 30, 2017), 82 FR 57627 (December 6, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees for NYSE BBO and NYSE Trades To Lower the Enterprise Fee, and for NYSE BQT To Lower the Access Fee) (SR–NYSE–2017–60).

³⁵ The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See *In*

²⁰ See Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSE–2020–05) (“National IF Approval Order”) (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (“2008 ArcaBook Approval Order”).

²¹ *NetCoalition I*, 615 F.3d at 544 (internal quotation omitted).

²² *Id.*

²³ See Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

²⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁵ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

²⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁷ See LTSE Market Announcement: MA–2020–020, dated August 14, 2020, announcing LTSE

whether to purchase Pillar Depth is entirely discretionary. The Exchange believes that Pillar Depth would provide high-quality, comprehensive partial depth of book data for the Exchange, NYSE Arca, NYSE American, NYSE Chicago and NYSE National in a unified view that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B and C securities through leveraging the depth and breadth of NYSE, NYSE Arca, NYSE American, NYSE Chicago and NYSE National without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use Pillar Depth data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to Pillar Depth are able to determine for themselves whether Pillar Depth is necessary for their business needs, and if so, whether or not it is attractively priced. If Pillar Depth does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use Pillar Depth.

In setting the proposed fees for Pillar Depth, the Exchange considered the competitiveness of the market for proprietary data for partial depth of book and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that such substitutes need not be identical, but only substantially similar to the product at hand.³⁶

the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations, Release Nos. 34-72182; AP-3-15350; AP-3-15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

³⁶ For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. See National IF Approval Order, *supra* note 20, at 67397 [release p. 21] (“[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.” (internal quotations omitted)).

The four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”), currently offer a market data product called the Cboe One Premium Feed,³⁷ which competes with the Pillar Depth data feed. Similar to the Cboe One Premium Feed, Pillar Depth can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, Pillar Depth, similar to Cboe One Premium Feed, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by the NYSE Group markets. The Exchange believes that Pillar Depth will offer a competitive alternative to the Cboe One Premium Feed.³⁸

The fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange’s Statement on Burden on Competition, the existence of alternatives to these data products further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute Pillar Depth, prospective users likely would not subscribe to, or would cease subscribing to, Pillar Depth.

The Proposed Fees Are Equitably Allocated and Are Not Unfairly Discriminatory

The Exchange believes that the proposed fee is equitable and non-discriminatory in that it would apply uniformly to all recipients of Exchange data. The Exchange also believes the proposed fee is competitive with those charged by other venues and, therefore,

³⁷ See BZX Rule 11.22(j); BYX Rule 11.22(i); EDGA Rule 13.8(b); and EDGX Rule 13.8(b). The Cboe One Feed offered by BZX, BYX, EDGA and EDGX is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Cboe exchanges. The Cboe One Feed also contains the individual last sale information, consolidated volume, the primary listing market’s official opening and closing price, and the current day consolidated high and low price for all listed equity securities. Cboe One Feed recipients may also elect to receive aggregated two-sided quotations from the Cboe exchanges for five (5) price levels (“Cboe One Premium Feed”).

³⁸ Fees for the Cboe One Premium Feed are available at https://www.cboe.com/market_data_services/us/equities/cboe_one/.

reasonable and equitably allocated to recipients. The Exchange also notes that the proposed fee is not designed to permit unfair discrimination because all market data recipients that subscribe to Pillar Depth would be charged the same fee. The Exchange further believes that the proposed Pillar Depth fee structure is equitable and not unfairly discriminatory because all vendors and subscribers that elect to purchase Pillar Depth would be charged the same fees. In addition, vendors and subscribers that do not wish to purchase Pillar Depth may separately purchase the five individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating Pillar Depth. To enable such competition, the Exchange is offering Pillar Depth on terms that a subscriber of those five feeds could offer a competing product if it so chooses.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

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

In accordance with Section 6(b)(8)³⁹ of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the Pillar Depth data feed represents aggregated and consolidated information from five existing market data feeds. Although the Exchange, NYSE American, NYSE Arca, NYSE Chicago and NYSE National are the exclusive distributors of the five Aggregated Lite data feeds from which certain data elements are taken to create Pillar Depth, the Exchange may not be the exclusive distributor of the aggregated and consolidated information that comprises the Pillar Depth data feed. Any other market participant recipient of the five Aggregated Lite feeds would be able, if it chose, to create a data feed with the same information as Pillar Depth and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange’s product.⁴⁰

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participant at a relative disadvantage compared to other market participant. As noted above, the proposed fees would apply equally to all subscribers of Pillar

³⁹ 78 U.S.C. 78f(b)(8).

⁴⁰ See Pillar Depth Product Filing, *supra* note 5.

Depth, and subscribers may choose whether to subscribe to Pillar Depth at all. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition.

Intermarket Competition. The Exchange believes that the proposed monthly Access Fee the Exchange proposes to charge subscribers for Pillar Depth would be pro-competitive because another market data recipient could perform a similar aggregating and consolidating function and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product, which may incorporate passing through fees associated with co-location at the Mahwah, New Jersey data center. However, the incremental co-location costs to a particular vendor may be inconsequential if such vendor is already co-located and is able to allocate its co-location costs over numerous product and customer relationships. The Exchange therefore believes that a competing vendor could create and offer a product similar to the Pillar Depth data feed at a similar cost. For these reasons, the Exchange believes that vendors could readily offer a product similar to Pillar Depth on a competitive basis.

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. As described above, Pillar Depth would compete with the Cboe One Premium Feed.⁴¹ These products each serve as reasonable substitutes for one another as they are each designed to provide investors with a unified view of quotes in all Tape A, B, and C securities. Each product provides subscribers with aggregated and consolidated quotes from multiple U.S. equities markets. Pillar Depth provides partial depth of book data from five NYSE-affiliated U.S. equities exchanges, while Cboe One Premium Feed similarly provides partial depth of book data from Cboe's four U.S. equities exchanges. Pillar Depth and Cboe One Premium Feed are intended to provide indicative pricing and therefore, are reasonable substitutes for one another. In setting the fee for the Pillar Depth, the Exchange is constrained by the fact that if its pricing is unattractive, customers will have their pick of

alternative partial depth of book market data products to purchase instead of purchasing the Exchange's product. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another source of market data information for its own. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

As such, in establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to Pillar Depth, including the five underlying feeds, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ⁴² of the Act and subparagraph (f)(2) of Rule 19b-4 ⁴³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ⁴⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-55 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSE-2024-55. 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

⁴¹ See *supra*, note 37.

⁴² 15 U.S.C. 78s(b)(3)(A).

⁴³ 17 CFR 240.19b-4(f)(2).

⁴⁴ 15 U.S.C. 78s(b)(2)(B).

submissions should refer to file number SR–NYSE–2024–55 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–21880 Filed 9–24–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101108; File No. SR–NYSEAMER–2024–55]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Establish Fees for the NYSE American Aggregated Lite Data Feed

September 19, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that, on September 6, 2024, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for the NYSE American Aggregated Lite data feed. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend the NYSE American LLC Equities Proprietary Market Data Fees Schedule (“Fee Schedule”) and establish fees for the NYSE American Aggregated Lite (“NYSE American Agg Lite”) data feed,⁴ effective September 6, 2024.⁵

In summary, the NYSE American Agg Lite is a NYSE American-only frequency-based depth of book market data feed of the NYSE American’s limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. The NYSE American Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE American Agg Lite includes partial depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE American Agg Lite includes order imbalance information prior to the opening and closing of trading.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices

and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁶

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁷ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁸ numerous alternative trading systems,⁹ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).¹⁰

Proposed NYSE American Agg Lite Data Feed Fees

The Exchange proposes to establish the fees listed below for the NYSE American Agg Lite data feed. The Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE, NYSE Arca and NYSE National) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data subscribers that also currently subscribe to market data feeds from the Exchange’s affiliates.

1. *Access Fee.* For the receipt of access to the NYSE American Agg Lite data feed, the Exchange proposes to charge \$500 per month. This proposed Access Fee would be charged to any data recipient that receives the NYSE American Agg Lite data feed. Data

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (“Regulation NMS”).

⁷ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

⁸ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fastanswers/divisionsmarketregmr/exchanges.html>.

⁹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

¹⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁴⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ The proposed rule change establishing the NYSE American Agg Lite data feed was immediately effective on February 27, 2024. See Securities Exchange Act Release No. 99690 (March 7, 2024), 89 FR 18445 (March 13, 2024) (SR–NYSEAMER–2024–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE American Aggregated Lite Market Data Feed).

⁵ The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSEAMER–2024–31). On July 11, 2024, the Exchange withdrew SR–NYSEAMER–2024–31 and replaced it with SR–NYSEAMER–2024–44. On September 6, 2024, the Exchange withdrew SR–NYSEAMER–2024–44 and replaced it with this filing.

recipients that only use display devices to view NYSE American Agg Lite market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee would be charged only once per firm.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of \$1 per month. The Exchange does not propose a fee for Non-Professional Users. The Professional User Fee would apply to each display device that has access to the NYSE American Agg Lite data feed.

3. *Redistribution Fee.* For redistribution of the NYSE American Agg Lite data feed, the Exchange proposes to establish a fee of \$250 per month. The proposed Redistribution Fee would be charged to any Redistributor of the NYSE American Agg Lite data feed, which is defined to mean a vendor or any person that provides a real-time NYSE American market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee would be charged only once per Redistributor account. As an incentive to potential Redistributors to subscribe to the NYSE American Agg Lite data feed, the Exchange proposes to waive the Access Fee and Redistribution Fee for a Redistributor if the Redistributor provides NYSE American Agg Lite externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE American Agg Lite data feed will have the Access Fee and Redistribution Fee waived if such Redistributor provides NYSE American Agg Lite externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE American Agg Lite, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE American Agg Lite market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE American Agg Lite and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to subscribe to and redistribute NYSE American Agg Lite. The Exchange believes that this proposed fee waiver for Redistributors of NYSE American Agg Lite would provide an incentive for Redistributors to make NYSE American Agg Lite

available to their customers, which will increase the availability of the Exchange's market data products to a larger potential population of data recipients.

Further, the Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE American Agg Lite to Professional and Non-Professional Users. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the combination of the Access Fee and Redistribution Fee for NYSE American Agg Lite that the Redistributor would otherwise be required to pay to the Exchange. For example, a Redistributor that reports external Professional Users in a month totaling \$750 or more would receive a maximum credit of \$750 for that month, which could effectively reduce its monthly fee for access and redistribution to zero. If that same Redistributor were to report external User quantities in a month totaling \$600 of monthly usage, that Redistributor would receive a credit of \$600. The Exchange believes the proposed credit would provide Redistributors with an incentive to increase their redistribution of NYSE American Agg Lite because the credit they would be eligible to receive would increase if they report additional external User quantities.

4. *Enterprise Fees.* The Exchange proposes to establish an enterprise license that will reduce Exchange fees and administrative costs for subscribers that disseminate NYSE American Agg Lite. Subscribers that are broker-dealers will be able to distribute the NYSE American Agg Lite data feed for display usage to an unlimited number of recipients (professional users and non-professional users) for a monthly fee of \$550, with an opportunity to lower that fee to \$500 per month if they contract for twelve months of service in advance.

As proposed, the NYSE American Agg Lite data feed may be distributed pursuant to the proposed market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer through such broker-dealer's own devices. Purchase of an enterprise license would eliminate per User subscriber fees for NYSE American Agg Lite. Further, the Exchange proposes to waive the Access Fee and the Redistribution Fee for NYSE American Agg Lite for Redistributors that pay the Professional and Non-Professional Enterprise Fee. The Exchange believes the proposed fee waiver would provide

an incentive for Redistributors to subscribe to the NYSE American Agg Lite market data product at the enterprise level to reduce the fees it would pay to the Exchange and without having to report the number of users that receive the data feed from the Redistributor.

Subscribers that intend to purchase a market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of \$500 per month for distribution to an unlimited number of professional users and non-professional users. This feature is intended to simplify cost projections and budgeting for both subscribers and the Exchange. Subscribers that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by NYSE American Agg Lite by paying the standard fee of \$550 per month for distribution to an unlimited number of professional users and non-professional users. Subscribers that elect to pay the monthly fee will be able to switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve-month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for subscribers, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

5. *Non-Display Use Fees.* The Exchange proposes to establish non-display fees for the NYSE American Agg Lite data feed that are based on the non-display use categories charged by NYSE, NYSE Arca, NYSE National, the CTA, and the UTP Plan for non-display use.¹¹

¹¹ See Endnote 1 to the NYSE Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf; Endnote 1 to the NYSE Arca Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Proprietary_Data_Fee_Schedule.pdf; Endnote 1 to the NYSE National Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_National_Market_Data_Fee_Schedule.pdf; Endnote 8 to the Schedule of Market Data Charges for the CTA, available here: <https://www.ctapl.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf>; and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: <http://utpplan.com/DOC/DataPolicies.pdf>. See, e.g., Securities Exchange Act Release Nos. 69285 (April 3, 2013), 78 FR 21172 (April 9, 2013) (SR-NYSEMKT-2013-32) and 72020 (September 9,

Non-display use would mean accessing, processing, or consuming the NYSE American Agg Lite data feed delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution ("Non-Display Use"). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE American Agg Lite, there would be three categories of, and fees applicable, to data recipients. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be \$1,000 per month and would apply when a data recipient's Non-Display Use of the NYSE American Agg Lite data feed is on its own behalf, not on behalf of its clients.

- As proposed, Category 2 Fees would be \$1,000 per month and would apply to a data recipient's Non-Display Use of the NYSE American Agg Lite data feed on behalf of its clients.

- As proposed, Category 3 Fees would be \$1,000 per month and would apply to a data recipient's Non-Display Use of the NYSE American Agg Lite data feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems ("ATs"), broker crossing networks, broker crossing systems not filed as ATs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged \$1,000 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of \$3,000 per month; even if the data recipient uses the NYSE American Agg Lite data feed for more than three platforms, it will not pay more than \$3,000 for such Category 3 use per month.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that

endnote would be referenced in the NYSE American Agg Lite data feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE American Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE American Agg Lite data feed for a Category 3 Non-Display Use basis, such as ATs and broker crossing systems not registered as ATs, as part of the Non-Display Use Declaration.

6. *Non-Display Use Declaration Late Fee.* Data recipients that receive the NYSE American Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2025, NYSE American Agg Lite data feed recipients would be required to submit, by January 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration applies to all real-time NYSE American data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of \$1,000 per month to any data recipient that pays an Access Fee for the NYSE American Agg Lite data feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31 due date, and would apply beginning February 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee applicable to NYSE American Agg Lite data feed would be set forth in endnote 2 on the Fee Schedule. As proposed, endnote 2 would be amended with the proposed addition of the following new text: "The Non-Display Declaration Late Fee will apply, beginning in 2025, to NYSE American Aggregated Lite data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and applies beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display use Declaration."

In addition, if a data recipient's use of the NYSE American Agg Lite data feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

7. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the "Multiple Data Feed Fee," that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE American Agg Lite data feed in more than two locations would be charged \$200 per additional location per month. No new reporting would be required.¹²

8. *Three-Month Fee Waiver.* The Exchange currently provides a one-month free trial to any firm that subscribes to a particular NYSE American market data product for the first time. Under the current one-month trial, a first-time subscriber is not charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee and Redistribution Fee for one calendar month.¹³ The Exchange now proposes an additional three-month fee waiver for any Redistributor that subscribes to a particular NYSE American market data product for the first time for external redistribution. As proposed, a first-time Redistributor would be any firm that has not previously subscribed to and externally redistributed a particular NYSE American market data product listed on the Fee Schedule. As proposed, a first-time Redistributor that subscribes to a particular NYSE American market data product would not be charged the Access Fee and the Redistribution Fee for that product for three calendar months. Any other fees, including but not limited to, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Enterprise Fee would be billable after the first calendar month after a first-time Redistributor subscribes to a particular NYSE American market data product. For example, a first-time Redistributor that chooses to subscribe to NYSE American Agg Lite on September 24,

¹² Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE American Agg Lite data feed, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

¹³ See Fee Schedule.

2024 would not be charged the Access Fee and the Redistribution Fee for the months of October, November, and December 2024. The proposed fee waiver would be for the three calendar months following the date a Redistributor is approved to receive access to the particular NYSE American market data product. The Exchange would provide the three-month fee waiver for each particular product to each Redistributor once.

The Exchange believes that providing a three-month fee waiver to NYSE American market data products listed on the Fee Schedule would enable potential Redistributors to determine whether a particular NYSE American market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed three-month fee waiver would also provide Redistributors with time to begin onboarding new clients prior to being liable to the Access Fee and the Redistribution Fee, allowing time to choose how to allocate costs and increase revenues to defray costs associated with providing a new feed to its customers.

Application of Proposed Fees

The Exchange is not required to make the NYSE American Agg Lite data feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE American Agg Lite data feed. Firms that choose to purchase the NYSE American Agg Lite data feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE American Agg Lite data feed or any other similar products are attractively priced.

The Exchange believes the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE American Agg Lite and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE American Agg Lite. The Exchange believes that this proposed rule change also has the potential to attract new Redistributors for NYSE American Agg Lite.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE American OpenBook feed. The Exchange is proposing fees for the NYSE American Agg Lite data feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE American OpenBook feed. Specifically, the fees for the NYSE American OpenBook feed—which like the NYSE American Agg Lite data feed, includes depth of book and security status messages—consist of an Access Fee of \$1,000 per month, a Professional User Fee (Per User) of \$5 per month, a Non-Professional User Fee (Per User) of \$1 per month, Non-Display Fees¹⁴ of \$2,000 per month for each of Categories 1, 2 and 3. The Exchange does not currently charge a Redistribution Fee for NYSE American OpenBook. The Exchange also charges a Non-Display Use Declaration Late Fee of \$1,000 per month and a Multiple Data Feed Fee of \$200 per month for NYSE American OpenBook.¹⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁶ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that

current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission's reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system “evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed” and that the SEC wield its regulatory power “in those situations where competition may not be sufficient,” such as in the creation of a “consolidated transactional reporting system.”¹⁹

The court agreed with the Commission's conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”²⁰

More recently, the Commission confirmed that it applies a “market-based” test in its assessment of market data fees, and that under that test:

the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.²¹

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I*, “[n]o one disputes that competition for order flow is fierce.”²² The court further noted that “no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,” and that an exchange “must compete

¹⁸ See Regulation NMS Adopting Release, 70 FR 37495, at 37499.

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. Cir. 2010) (“*NetCoalition I*”) (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.A.N. 323).

²⁰ *Id.* at 535.

²¹ See Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (“National IF Approval Order”) (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008).

²² *NetCoalition I*, 615 F.3d at 544 (internal quotation omitted).

¹⁴ The Exchange does not anticipate that data recipients would use NYSE American Agg Lite for non-display purpose. However, the Exchange is adopting Non-Display use fees so that the proposed fees for NYSE American Agg Lite are consistent with the Exchange's fee structure for its other proprietary market data products.

¹⁵ See NYSE American LLC Equities Proprietary Market Data Fees at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4), (5).

vigorously for order flow to maintain its share of trading volume.”²³

As noted above, while Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²⁴ Indeed, today, equity trading is currently dispersed across 16 exchanges,²⁵ numerous alternative trading systems,²⁶ broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.²⁷

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020;²⁸ Members Exchange (MEMX), which began operations as an exchange on September 29, 2020;²⁹ and Miami International Holdings (MIAX), which began operations of its first equities exchange on September 29, 2020.³⁰

More specifically, in setting fees for the NYSE American Agg Lite data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to

customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange’s data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for proprietary partial depth of book market data.

The Exchange notes that the NYSE American Agg Lite is entirely optional. The Exchange is not required to make the NYSE American Agg Lite available to any customers, nor is any customer required to purchase the NYSE American Agg Lite market data feed. Unlike some other data products (e.g., the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,³¹ a customer’s decision whether to purchase the NYSE American Agg Lite is entirely discretionary. The Exchange believes NYSE American Agg Lite would provide high-quality, comprehensive partial depth of book data that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B and C securities without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use NYSE American Agg Lite data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to NYSE American Agg Lite are able to determine for themselves whether the NYSE American Agg Lite data feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE American Agg Lite data feed does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE American Agg Lite data feed.

In setting the proposed fees for the NYSE American Agg Lite data feed, the Exchange considered the competitiveness of the market for proprietary partial depth of book data and all of the implications of that

competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.³²

The NYSE American Aggregated Lite market data feed is subject to significant competitive forces that constrain its pricing. Specifically, the NYSE American Agg Lite data feed competes head-to-head with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”), each of which offers a market data product called BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth and EDGX Summary Depth, respectively (collectively, the “Cboe Summary Depth”).³³ Similar to Cboe Summary Depth, NYSE American Agg Lite can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, NYSE American Agg Lite, similar to Cboe Summary Depth, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by NYSE American, except unlike Cboe Summary Depth, which provides aggregated depth per security for up to five price levels, NYSE American Agg Lite would provide aggregated depth per security for up to ten price levels on both the bid and offer

²³ *Id.*

²⁴ See Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

²⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁶ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

²⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁸ See LTSE Market Announcement: MA-2020-020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020_Production_Securities_Launching_August_28_-_Google_Docs.pdf and LTSE Market Announcement: MA-2020-025, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.

²⁹ As of October 29, 2020, MEMX is trading all NMS symbols. See <https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/>.

³⁰ See MIAX Pearl Press release, dated September 29, 2020, available here: https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.

³¹ The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See *In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations*, Release Nos. 34-72182; AP-3-15350; AP-3-15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

³² For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. See National IF Approval Order, *supra* note 21, at 67397 [release p. 21] (“[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.” (internal quotations omitted)).

³³ See BZX Rule 11.22(m) BZX Summary Depth; BYX Rule 11.22(k) BYX Summary Depth; EDGA Rule 13.8(f) EDGA Summary Depth; and EDGX Rule 13.8(f) EDGX Summary Depth. The Cboe Summary Depth offered by BZX, BYX, EDGA and EDGX are each a data feed that offers aggregated two-sided quotations for all displayed orders for up to five (5) price levels and contains the individual last sale information, market status, trading status and trade break messages.

sides of the NYSE American limit order book as well as auction imbalance data.

The specific fees that the Exchange proposes for the NYSE American Agg Lite data feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are reasonable because they would provide vendors and subscribers with the option to subscribe to a market data product that integrates a subset of data from existing products and where such aggregated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements.

The Exchange believes the proposed fees for the NYSE American Agg Lite data feed are also reasonable when compared to fees for comparable products, such as the Cboe Summary Depth.³⁴ Additionally, the Exchange is proposing fees for the NYSE American Agg Lite data feed that are based on the existing fee structure that data recipients already pay for the NYSE American's other market data products. The Exchange believes that adopting the same fee structure would reduce administrative burdens on NYSE American data subscribers that also currently subscribe to market data feeds from NYSE American.

Access Fee. The Exchange believes that the proposed monthly Access Fee of \$500 for the NYSE American Aggregated Lite data feed is reasonable because it is lower than the fees charged by BZX, BYX, EDGA, and EDGX, each of which charges between \$2,500 per month to \$5,000 per month for both Internal Distribution and External Distribution of the Cboe Summary Depth market data product.³⁵

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE American Agg Lite data feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Not charging a Non-Professional User fee is reasonable because it provides a cost-effective method for Non-Professional Users to access the NYSE American Agg Lite data feed by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of \$1 and monthly Non-Professional User Fee (Per User) of \$0 are reasonable because they are

comparable to user fees generally charged by exchanges. For example, NYSE American charges a monthly Professional User Fee (Per User) of \$5 and a monthly Non-Professional User Fee (Per User) of \$1 for the NYSE American OpenBook feed.³⁶ Although the proposed User Fees for Professional and Non-Professional Users are higher than those charged by BZX, BYX, EDGA and EDGX, the Exchange notes that User fees are only a subset of the total fees that vendors and subscribers pay and the lower fees proposed to access and redistribute NYSE American Agg Lite would provide such market data recipients with a more affordable alternative to existing substitutes offered by the Exchange and its competitors.

Redistribution Fees. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit by re-transmitting the Exchange's market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE American Agg Lite data feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange believes the proposed monthly Redistribution Fee of \$250 for the NYSE American Agg Lite data feed is reasonable because it is nominal and lower than the fees charged by BZX, BYX, EDGA and EDGX, each of which charges considerably more for both Internal Distribution and External Distribution of the Cboe Summary Depth market data feed.³⁷

Enterprise Fees. The Exchange believes the proposed enterprise license is reasonable because it would reduce exchange fees, lower administrative costs for subscribers that are broker-dealers and help expand the availability of market information to investors, and thereby increase participation in financial markets. Subscribers that are broker-dealers would be able to disseminate the NYSE American Agg Lite data feed for display usage to an unlimited number of professional users and non-professional users for a monthly fee of \$550, or \$500 if they contract for twelve months of service in advance. The proposed enterprise license would result in lower fees for subscribers able to reach the largest audience of investors, including retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by

the Commission as equitable allocations of reasonable dues, fees and charges.³⁸

Non-Display Use Fees. Non-display data can be used by data recipients for a wide variety of uses, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms. Non-display data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial benefit from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

The Exchange believes that the proposed fees of \$1,000 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to non-display use fees generally charged by exchanges. For example, the fees for Non-Display Use of NYSE American OpenBook for Categories 1, 2 and 3 is \$2,000 per month.³⁹ The Exchange believes that it is reasonable to cap non-display use fees for Category 3 at \$3,000 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE American Agg Lite data feed.

The proposed Non-Display Use fees for the NYSE American Agg Lite data feed are also reasonable because they take into account the usefulness of receiving the data for Non-Display Use on an integrated basis.

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE American Agg Lite data feed and can correctly assess fees for the uses of the NYSE American Agg Lite data feed. Requiring annual submissions of such declarations

³⁴ See https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.

³⁵ *Id.*

³⁶ See Fee Schedule.

³⁷ See *supra*, note 34.

³⁸ For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). See also Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR-NYSE-2017-60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

³⁹ See Fee Schedule.

is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE American Agg Lite data feed, the Exchange needs to have current and accurate information about the use of the NYSE American Agg Lite data feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest fee for taking a data feed for a market data product in more than two locations. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE American Agg Lite data feed to new Redistributors for three calendar months is reasonable because it would enable potential Redistributors to determine whether a particular NYSE American market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed fee waiver would also allow Redistributors to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new

market data product available without charging a fee for three months is consistent with offerings of other exchanges. For example, BZX offers subscribers of BZX Summary Depth a three-month credit for external distribution, which is akin to the three-month fee waiver proposed by the Exchange.⁴⁰

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE American Agg Lite data feed are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE American Agg Lite data feed. Any subscriber or vendor that chooses to subscribe to the NYSE American Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors are not required to purchase the NYSE American Agg Lite data feed and may choose to receive the data on the NYSE American Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of \$500 for the NYSE American Agg Lite data feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE American Agg Lite data feed, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees (\$1 per month per user) from Non-Professional User fees (\$0 per month per user) for display device access to the NYSE American Agg Lite data feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it

more broadly available.⁴¹ Offering the NYSE American Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE American Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of \$250 for redistributing the NYSE American Agg Lite data feed is equitably allocated because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license is equitably allocated because it would be available on an equal basis to all subscribers that are broker-dealers, each of whom would benefit from reduced exchange fees and from lower administrative costs. Moreover, the specific feature of the proposed enterprise license that will allow subscribers to lower fees by subscribing to a twelve-month contract is also an equitable allocation because all subscribers will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Subscribers will be free to move from the monthly to the annual rate at any time, or from annual to a monthly fee, with notice, at the expiration of the twelve-month period.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a \$1,000 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in

⁴⁰ See e.g., Securities Exchange Act Release No. 94432 (March 16, 2022), 87 FR 16277 (March 22, 2022) (SR-ChoeBZX-2022-015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products).

⁴¹ See, e.g., Securities Exchange Act Release No. 70212 (August 15, 2013), 78 FR 51775 (August 21, 2013) (SR-NYSEMKT-2013-69) (lowering the Non-Professional User Fee (Per User) for NYSE MKT BBO and Trades); Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is equitable to cap non-display use fees for Category 3 at \$3,000 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE American Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of \$1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to any data recipient that pays an Access Fee for the NYSE American Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the \$200 per month per location fee to data recipients taking the NYSE American Agg Lite data feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE American Agg Lite data feed to new Redistributors for three calendar months is equitable because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE

American Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is equitable to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to and redistributed the NYSE American Agg Lite data feed, since customers who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for NYSE American Agg Lite data feed are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE American Agg Lite data feed are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE American Agg Lite data feed. Any subscriber, including Redistributor, that chooses to subscribe to the NYSE American Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers, including Redistributors, may choose to receive the data on the NYSE American Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of \$500 for the NYSE American Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE American Agg Lite, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees (\$1 per month per user) from Non-Professional User fees (\$0 per month per user) for display device access to the NYSE American Agg Lite data feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users

and make it more broadly available.⁴² Offering the NYSE American Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE American Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of \$250 for redistributing the NYSE American Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those subscribers that are able to reach the largest audiences of investors, including retail investors, a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for other market data products.⁴³ Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each subscriber will be able to accept or reject the license depending on whether it will or will not lower costs for that particular subscriber, and, if the license is not sufficiently competitive, the Exchange may lose market share. The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants can readily find substitutes. Accordingly, the Exchange is constrained from introducing a fee that would be inequitable or unfairly discriminatory.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use

⁴² *Id.*

⁴³ See e.g., Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR-NASDAQ-2018-058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License).

fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a \$1,000 per month fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to cap non-display use fees for Category 3 at \$3,000 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE American Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of \$1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE American Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the \$200 per month per location fee to data recipients taking the NYSE American Agg Lite data feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition,

the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE American Agg Lite data feed to new Redistributors for three months is not unfairly discriminatory because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE American Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is not unfairly discriminatory to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to the NYSE American Agg Lite data feed, since Redistributors who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE American Agg Lite data feed are not unfairly discriminatory.

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

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fees would apply to all subscribers, including Redistributors, of the NYSE American Agg Lite data feed, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (e.g., Category 2 fees apply only to those

making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange is constrained by the availability of substitute partial depth of book market data products and by the fact that if its pricing is unattractive, customers will have their pick of alternative partial depth of book market data products to purchase instead of purchasing the Exchange's products.

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. Many other exchanges offer proprietary data feeds like the NYSE American Agg Lite data feed, supplying partial depth of book order data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section

19(b)(3)(A)⁴⁴ of the Act and subparagraph (f)(2) of Rule 19b-4⁴⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEAMER-2024-55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-NYSEAMER-2024-55 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-21879 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101110; File No. SR-NYSEARCA-2024-75]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for the NYSE Arca Aggregated Lite Data Feed

September 19, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 6, 2024, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for the NYSE Arca Aggregated Lite data feed. The proposed rule change is available on the Exchange's website at

www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the NYSE Arca Equities Proprietary Market Data Fees Schedule ("Fee Schedule") and establish fees for the NYSE Arca Aggregated Lite ("NYSE Arca Agg Lite") data feed,⁴ effective September 6, 2024.⁵

In summary, the NYSE Arca Agg Lite is a NYSE Arca-only frequency-based depth of book market data feed of the NYSE Arca's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. The NYSE Arca Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE Arca Agg Lite includes partial depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Arca Agg Lite includes order imbalance information prior to the opening and closing of trading.

⁴ The proposed rule change establishing the NYSE Arca Agg Lite data feed was immediately effective on February 27, 2024. See Securities Exchange Act Release No. 99713 (March 12, 2024), 89 FR 19381 (March 18, 2024) (SR-NYSEARCA-2024-22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Arca Aggregated Lite Market Data Feed).

⁵ The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR-NYSEARCA-2024-39). On July 11, 2024, the Exchange withdrew SR-NYSEARCA-2024-39 and replaced it with SR-NYSEARCA-2024-60. On September 6, the Exchange withdrew SR-NYSEARCA-2024-60 and replaced it with this filing.

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f)(2).

⁴⁶ 15 U.S.C. 78s(b)(2)(B).

⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁶

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁷ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁸ numerous alternative trading systems,⁹ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).¹⁰

Proposed NYSE Arca Agg Lite Data Feed Fees

The Exchange proposes to establish the fees listed below for the NYSE Arca Agg Lite data feed. The Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE, NYSE American and NYSE National) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data

subscribers that also currently subscribe to market data feeds from the Exchange’s affiliates.

1. *Access Fee.* For the receipt of access to the NYSE Arca Agg Lite data feed, the Exchange proposes to charge \$1,500 per month. This proposed Access Fee would be charged to any data recipient that receives the NYSE Arca Agg Lite data feed. Data recipients that only use display devices to view NYSE Arca Agg Lite market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee would be charged only once per firm.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of \$30 per month and a Non-Professional User Fee (Per User) of \$4 per month. These user fees would apply to each display device that has access to the NYSE Arca Agg Lite data feed.

3. *Redistribution Fee.* For redistribution of the NYSE Arca Agg Lite data feed, the Exchange proposes to establish a fee of \$250 per month. The proposed Redistribution Fee would be charged to any Redistributor of the NYSE Arca Agg Lite data feed, which is defined to mean a vendor or any person that provides a real-time NYSE Arca market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee would be charged only once per Redistributor account. As an incentive to potential Redistributors to subscribe to the NYSE Arca Agg Lite data feed, the Exchange proposes to waive the Access Fee and Redistribution Fee for a Redistributor if the Redistributor provides NYSE Arca Agg Lite externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE Arca Agg Lite data feed will have the Access Fee and Redistribution Fee waived if such Redistributor provides NYSE Arca Agg Lite externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE Arca Agg Lite, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE Arca Agg Lite market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE Arca Agg Lite and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would

need its Redistributor to subscribe to and redistribute NYSE Arca Agg Lite. The Exchange believes that this proposed fee waiver for Redistributors of NYSE Arca Agg Lite would provide an incentive for Redistributors to make NYSE Arca Agg Lite available to their customers, which will increase the availability of the Exchange’s market data products to a larger potential population of data recipients.

Further, the Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE Arca Agg Lite to Professional and Non-Professional Users. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the combination of the Access Fee and Redistribution Fee for NYSE Arca Agg Lite that the Redistributor would otherwise be required to pay to the Exchange. For example, a Redistributor that reports external Professional Users and Non-Professional Users in a month totaling \$1,750 or more would receive a maximum credit of \$1,750 for that month, which could effectively reduce its monthly fee for access and redistribution to zero. If that same Redistributor were to report external User quantities in a month totaling \$600 of monthly usage, that Redistributor would receive a credit of \$600. The Exchange believes the proposed credit would provide Redistributors with an incentive to increase their redistribution of NYSE Arca Agg Lite because the credit they would be eligible to receive would increase if they report additional external User quantities.

4. *Enterprise Fees.* The Exchange proposes to establish an enterprise license that will reduce Exchange fees and administrative costs for subscribers that disseminate NYSE Arca Agg Lite. Subscribers that are broker-dealers will be able to distribute the NYSE Arca Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of \$35,000, with an opportunity to lower that fee to \$31,500 per month if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers will be able to distribute the NYSE Arca Agg Lite data feed for display usage to an unlimited number of recipients (professional users and non-professional users) for a monthly fee of \$110,000, with an opportunity to lower that fee to \$99,000 per month if they contract for twelve months of service in advance.

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁷ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁸ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html>.

⁹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

¹⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

As proposed, the NYSE Arca Agg Lite data feed may be distributed pursuant to the proposed market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer through such broker-dealer's own devices. Purchase of an enterprise license would eliminate per User subscriber fees for NYSE Arca Agg Lite. Further, the Exchange proposes to waive the Access Fee and the Redistribution Fee for NYSE Arca Agg Lite for Redistributors that pay either the Non-Professional Enterprise Fee or the Professional and Non-Professional Enterprise Fee. The Exchange believes the proposed fee waiver would provide an incentive for Redistributors to subscribe to the NYSE Arca Agg Lite market data product at the enterprise level to reduce the fees it would pay to the Exchange and without having to report the number of users that receive the data feed from the Redistributor.

Subscribers that intend to purchase a market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of \$31,500 for distribution of NYSE Arca Agg Lite to an unlimited number of non-professional users, or \$99,000 per month for distribution to an unlimited number of professional users and non-professional users. This feature is intended to simplify cost projections and budgeting for both subscribers and the Exchange. Subscribers that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by NYSE Arca Agg Lite by paying the standard fee of \$35,000 per month for distribution of NYSE Arca Agg Lite to an unlimited number of non-professional users, or \$110,000 per month for distribution to an unlimited number of professional users and non-professional users. Subscribers that elect to pay the monthly fee will be able to switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve-month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for subscribers, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

5. Non-Display Use Fees. The Exchange proposes to establish non-display fees for the NYSE Arca Agg Lite data feed that are based on the non-display use categories charged by NYSE, NYSE American, NYSE National, the CTA, and the UTP Plan for non-display

use.¹¹ Non-display use would mean accessing, processing, or consuming the NYSE Arca Agg Lite data feed delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution ("Non-Display Use"). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE Arca Agg Lite, there would be three categories of, and fees applicable, to data recipients. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be \$4,500 per month and would apply when a data recipient's Non-Display Use of the NYSE Arca Agg Lite data feed is on its own behalf, not on behalf of its clients.
- As proposed, Category 2 Fees would be \$4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Arca Agg Lite data feed on behalf of its clients.
- As proposed, Category 3 Fees would be \$4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Arca Agg Lite data feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative

trading systems ("ATSS"), broker crossing networks, broker crossing systems not filed as ATSS, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged \$4,500 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of \$13,500 per month; even if the data recipient uses the NYSE Arca Agg Lite data feed for more than three platforms, it will not pay more than \$13,500 for such Category 3 use per month.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the NYSE Arca Agg Lite data feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE Arca Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE Arca Agg Lite data feed for a Category 3 Non-Display Use basis, such as ATSS and broker crossing systems not registered as ATSS, as part of the Non-Display Use Declaration.

6. Non-Display Use Declaration Late Fee. Data recipients that receive the NYSE Arca Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2025, NYSE Arca Agg Lite data feed recipients would be required to submit, by January 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration applies to all real-time NYSE Arca data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of \$1,000 per month to any data recipient that pays an Access Fee for the NYSE Arca Agg Lite data feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31 due date, and would apply beginning February 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee applicable to NYSE Arca Agg Lite data feed would be set

¹¹ See Endnote 1 to the NYSE Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf; Endnote 1 to the NYSE American LLC Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf; Endnote 1 to the NYSE National Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_National_Market_Data_Fee_Schedule.pdf; Endnote 8 to the Schedule of Market Data Charges for the CTA, available here: <https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf>; and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: <http://utpplan.com/DOC/Datapolicies.pdf>. See, e.g., Securities Exchange Act Release Nos. 69315 (April 5, 2013), 78 FR 21668 (April 11, 2013) (SR-NYSEArca-2013-37) and 73011 (September 5, 2014), 79 FR 54315 (September 11, 2014) (SR-NYSEARCA-2014-93).

forth in endnote 2 on the Fee Schedule. As proposed, endnote 2 would be amended with the proposed addition of the following new text: “The Non-Display Declaration Late Fee will apply, beginning in 2025, to NYSE Arca Aggregated Lite data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and applies beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display use Declaration.”

In addition, if a data recipient’s use of the NYSE Arca Agg Lite data feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

7. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the “Multiple Data Feed Fee,” that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE Arca Agg Lite data feed in more than two locations would be charged \$200 per additional location per month. No new reporting would be required.¹²

8. *Three-Month Fee Waiver.* The Exchange currently provides a one-month free trial to any firm that subscribes to a particular NYSE Arca market data product for the first time. Under the current one-month trial, a first-time subscriber is not charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee and Redistribution Fee for one calendar month.¹³ The Exchange now proposes an additional three-month fee waiver for any Redistributor that subscribes to a particular NYSE Arca market data product for the first time for external redistribution. As proposed, a first-time Redistributor would be any firm that has not previously subscribed to and externally redistributed a particular NYSE Arca market data product listed on the Fee Schedule. As proposed, a first-time Redistributor that subscribes to a particular NYSE Arca market data product would not be charged the

Access Fee and the Redistribution Fee for that product for three calendar months. Any other fees, including but not limited to, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Enterprise Fee would be billable after the first calendar month after a first-time Redistributor subscribes to a particular NYSE Arca market data product. For example, a first-time Redistributor that chooses to subscribe to NYSE Arca Agg Lite on September 24, 2024 would not be charged the Access Fee and the Redistribution Fee for the months of October, November, and December 2024. The proposed fee waiver would be for the three calendar months following the date a Redistributor is approved to receive access to the particular NYSE Arca market data product. The Exchange would provide the three-month fee waiver for each particular product to each Redistributor once.

The Exchange believes that providing a three-month fee waiver to NYSE Arca market data products listed on the Fee Schedule would enable potential Redistributors to determine whether a particular NYSE Arca market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange’s market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed three-month fee waiver would also provide Redistributors with time to begin onboarding new clients prior to being liable to the Access Fee and the Redistribution Fee, allowing time to choose how to allocate costs and increase revenues to defray costs associated with providing a new feed to its customers.

Application of Proposed Fees

The Exchange is not required to make the NYSE Arca Agg Lite data feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE Arca Agg Lite data feed. Firms that choose to purchase the NYSE Arca Agg Lite data feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE Arca Agg Lite data feed or any other similar products are attractively priced.

The Exchange believes the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE Arca Agg Lite and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE Arca Agg Lite. The Exchange believes that this proposed rule change also has the potential to attract new Redistributors for NYSE Arca Agg Lite.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE ArcaBook feed. The Exchange is proposing fees for the NYSE Arca Agg Lite data feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE ArcaBook feed. Specifically, the fees for the NYSE ArcaBook feed—which like the NYSE Arca Agg Lite data feed, includes depth of book, auction imbalances, and security status messages—consist of an Access Fee of \$2,000 per month, a Professional User Fee (Per User) of \$60 per month, a Non-Professional User Fee (Per User) that ranges between \$3 per month to \$10 per month, Non-Display Fees¹⁴ of \$6,000 per month for each of Categories 1, 2 and 3, and a Redistribution Fee of \$2,000 per month. The Exchange also charges a Non-Display Use Declaration Late Fee of \$1,000 per month and a Multiple Data Feed Fee of \$200 per month for NYSE ArcaBook.¹⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁶ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique

¹² Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Arca Agg Lite data feed, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

¹³ See Fee Schedule.

¹⁴ The Exchange does not anticipate that data recipients would use NYSE Arca Agg Lite for non-display purpose. However, the Exchange is adopting Non-Display use fees so that the proposed fees for NYSE Arca Agg Lite are consistent with the Exchange’s fee structure for its other proprietary market data products.

¹⁵ See NYSE Arca Equities Proprietary Market Data Fees at https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Proprietary_Data_Fee_Schedule.pdf.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4), (5).

market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system “evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed” and that the SEC wield its regulatory power “in those situations where competition may not be sufficient,” such as in the creation of a “consolidated transactional reporting system.”¹⁹

The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”²⁰

More recently, the Commission confirmed that it applies a “market-based” test in its assessment of market data fees, and that under that test:

the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.²¹

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I*, “[n]o one disputes that competition for order flow is fierce.”²² The court further noted that “no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,” and that an exchange “must compete vigorously for order flow to maintain its share of trading volume.”²³

As noted above, while Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²⁴ Indeed, today, equity trading is currently dispersed across 16 exchanges,²⁵ numerous alternative trading systems,²⁶ broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.²⁷

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020;²⁸ Members Exchange (MEMX), which began operations as an exchange on September 29, 2020;²⁹ and Miami International Holdings (MIAX), which

began operations of its first equities exchange on September 29, 2020.³⁰

More specifically, in setting fees for the NYSE Arca Agg Lite data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange’s data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for proprietary partial depth of book market data.

The Exchange notes that the NYSE Arca Agg Lite is entirely optional. The Exchange is not required to make the NYSE Arca Agg Lite available to any customers, nor is any customer required to purchase the NYSE Arca Agg Lite market data feed. Unlike some other data products (e.g., the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,³¹ a customer’s decision whether to purchase the NYSE Arca Agg Lite is entirely discretionary. The Exchange believes NYSE Arca Agg Lite would provide high-quality, comprehensive partial depth of book data that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B and C securities without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use NYSE Arca Agg Lite data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to NYSE Arca Agg Lite are able to determine for themselves whether the NYSE Arca Agg Lite data feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE Arca Agg Lite data feed does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct

²² *NetCoalition I*, 615 F.3d at 544 (internal quotation omitted).

²³ *Id.*

²⁴ See Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

²⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁶ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

²⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁸ See LTSE Market Announcement: MA-2020-020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020_Production_Securities_Launching_August_28_-_Google_Docs.pdf and LTSE Market Announcement: MA-2020-025, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.

²⁹ As of October 29, 2020, MEMX is trading all NMS symbols. See <https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/>.

³⁰ See MIAX Pearl Press release, dated September 29, 2020, available here: https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_09292020.pdf.

³¹ The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See *In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations*, Release Nos. 34-72182; AP-3-15350; AP-3-15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSs have chosen not to do so.

¹⁸ See Regulation NMS Adopting Release, 70 FR 37495, at 37499.

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. Cir. 2010) (“*NetCoalition I*”) (quoting H.R. Rep. No. 94-229 at 92 (1975), as reprinted in 1975 U.S.C.A.N. 323).

²⁰ *Id.* at 535.

²¹ See Securities Exchange Act Release No. 34-90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR-NYSE-NAT-2020-05) (“National IF Approval Order”) (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008).

their business operations in ways that do not use the NYSE Arca Agg Lite data feed.

In setting the proposed fees for the NYSE Arca Agg Lite data feed, the Exchange considered the competitiveness of the market for proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.³²

The NYSE Arca Aggregated Lite market data feed is subject to significant competitive forces that constrain its pricing. Specifically, the NYSE Arca Agg Lite data feed competes head-to-head with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”), each of which offers a market data product called BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth and EDGX Summary Depth, respectively (collectively, the “Cboe Summary Depth”).³³ Similar to Cboe Summary Depth, NYSE Arca Agg Lite can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, NYSE Arca Agg Lite, similar to Cboe Summary Depth, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by

NYSE Arca, except unlike Cboe Summary Depth, which provides aggregated depth per security for up to five price levels, NYSE Arca Agg Lite would provide aggregated depth per security for up to ten price levels on both the bid and offer sides of the NYSE Arca limit order book as well as auction imbalance data.

The specific fees that the Exchange proposes for the NYSE Arca Agg Lite data feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are reasonable because they would provide vendors and subscribers with the option to subscribe to a market data product that integrates a subset of data from existing products and where such aggregated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements.

The Exchange believes the proposed fees for the NYSE Arca Agg Lite data feed are also reasonable when compared to fees for comparable products, such as the Cboe Summary Depth.³⁴ Additionally, the Exchange is proposing fees for the NYSE Arca Agg Lite data feed that are based on the existing fee structure that data recipients already pay for the NYSE Arca’s other market data products. The Exchange believes that adopting the same fee structure would reduce administrative burdens on NYSE Arca data subscribers that also currently subscribe to market data feeds from NYSE Arca.

Access Fee. The Exchange believes that the proposed monthly Access Fee of \$1,500 for the NYSE Arca Aggregated Lite data feed is reasonable because it is lower than the fees charged by BZX, BYX, EDGA, and EDGX, each of which charges between \$2,500 per month to \$5,000 per month for both Internal Distribution and External Distribution of the Cboe Summary Depth market data product.³⁵

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE Arca Agg Lite data feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the NYSE Arca Agg Lite data feed

by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of \$30 and monthly Non-Professional User Fee (Per User) of \$4 are reasonable because they are comparable to user fees generally charged by exchanges. For example, NYSE Arca charges a monthly Professional User Fee (Per User) of \$60 and a monthly Non-Professional User Fee (Per User) of up to \$10 for the NYSE ArcaBook feed.³⁶ Although the proposed User Fees for Professional and Non-Professional Users are higher than those charged by BZX, BYX, EDGA and EDGX, the Exchange notes that User fees are only a subset of the total fees that vendors and subscribers pay and the lower fees proposed to access and redistribute NYSE Arca Agg Lite would provide such market data recipients with a more affordable alternative to existing substitutes offered by the Exchange and its competitors.

Redistribution Fees. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit by re-transmitting the Exchange’s market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE Arca Agg Lite data feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange believes the proposed monthly Redistribution Fee of \$250 for the NYSE Arca Agg Lite data feed is reasonable because it is nominal and lower than the fees charged by BZX, BYX, EDGA and EDGX, each of which charges considerably more for both Internal Distribution and External Distribution of the Cboe Summary Depth market data feed.³⁷

Enterprise Fees. The Exchange believes the proposed enterprise license is reasonable because it would reduce exchange fees, lower administrative costs for subscribers that are broker-dealers and help expand the availability of market information to investors, and thereby increase participation in financial markets. Subscribers that are broker-dealers would be able to disseminate the NYSE Arca Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of \$35,000, or \$31,500 if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers would be able to disseminate the NYSE Arca Agg Lite

³² For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. See National IF Approval Order, *supra* note 21, at 67397 [release p. 21] (“[I]nformation provided by NYSE National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.” (internal quotations omitted)).

³³ See BZX Rule 11.22(m) BZX Summary Depth; BYX Rule 11.22(k) BYX Summary Depth; EDGA Rule 13.8(f) EDGA Summary Depth; and EDGX Rule 13.8(f) EDGX Summary Depth. The Cboe Summary Depth offered by BZX, BYX, EDGA and EDGX are each a data feed that offers aggregated two-sided quotations for all displayed orders for up to five (5) price levels and contains the individual last sale information, market status, trading status and trade break messages.

³⁴ See https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.

³⁵ *Id.*

³⁶ See Fee Schedule.

³⁷ See *supra*, note 34.

data feed for display usage to an unlimited number of professional users and non-professional users for a monthly fee of \$110,000, or \$99,000 if they contract for twelve months of service in advance. The proposed enterprise license would result in lower fees for subscribers able to reach the largest audience of investors, including retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by the Commission as equitable allocations of reasonable dues, fees and charges.³⁸

Non-Display Use Fees. Non-display data can be used by data recipients for a wide variety of uses, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms. Non-display data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial benefit from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

The Exchange believes that the proposed fees of \$4,500 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to non-display use fees generally charged by exchanges. For example, the fees for Non-Display Use of NYSE ArcaBook for Categories 1, 2 and 3 is \$6,000 per month.³⁹ The Exchange believes that it is reasonable to cap non-display use fees for Category 3 at \$13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Arca Agg Lite data feed.

The proposed Non-Display Use fees for the NYSE Arca Agg Lite data feed are also reasonable because they take into account the usefulness of receiving the

data for Non-Display Use on an integrated basis.

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE Arca Agg Lite data feed and can correctly assess fees for the uses of the NYSE Arca Agg Lite data feed. Requiring annual submissions of such declarations is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE Arca Agg Lite data feed, the Exchange needs to have current and accurate information about the use of the NYSE Arca Agg Lite data feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest fee for taking a data feed for a market data product in more than two locations. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Arca Agg Lite data feed to new Redistributors for three calendar months is reasonable because it would enable potential Redistributors to determine whether a particular NYSE Arca market data product is useful to their business models before fully committing to expend development and

implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed fee waiver would also allow Redistributors to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new market data product available without charging a fee for three months is consistent with offerings of other exchanges. For example, BZX offers subscribers of BZX Summary Depth a three-month credit for external distribution, which is akin to the three-month fee waiver proposed by the Exchange.⁴⁰

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE Arca Agg Lite data feed are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE Arca Agg Lite data feed. Any subscriber or vendor that chooses to subscribe to the NYSE Arca Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors are not required to purchase the NYSE Arca Agg Lite data feed and may choose to receive the data on the NYSE Arca Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of \$1,500 for the NYSE Arca Agg Lite data feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Arca Agg Lite data feed, regardless of what type of business they operate or the use they plan to make of the data feed.

³⁸ For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). See also Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR-NYSE-2017-60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

³⁹ See Fee Schedule.

⁴⁰ See e.g., Securities Exchange Act Release No. 94432 (March 16, 2022), 87 FR 16277 (March 22, 2022) (SR-CboeBZX-2022-015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products).

User Fees. The Exchange believes that the fee structure differentiating Professional User fees (\$30 per month per user) from Non-Professional User fees (\$4 per month per user) for display device access to the NYSE Arca Agg Lite data feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.⁴¹ Offering the NYSE Arca Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Arca Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of \$250 for redistributing the NYSE Arca Agg Lite data feed is equitably allocated because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license is equitably allocated because it would be available on an equal basis to all subscribers that are broker-dealers, each of whom would benefit from reduced exchange fees and from lower administrative costs. Moreover, the specific feature of the proposed enterprise license that will allow subscribers to lower fees by subscribing to a twelve-month contract is also an equitable allocation because all subscribers will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Subscribers will be free to move from the monthly to the annual rate at any time, or from annual to a monthly fee, with notice, at the expiration of the twelve-month period.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by

automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a \$4,500 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is equitable to cap non-display use fees for Category 3 at \$13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Arca Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of \$1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to any data recipient that pays an Access Fee for the NYSE Arca Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the \$200 per month per location fee to data recipients taking the NYSE Arca Agg Lite data feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Arca Agg Lite data feed to new Redistributors for three calendar months is equitable because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Arca Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is equitable to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to and redistributed the NYSE Arca Agg Lite data feed, since customers who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE Arca Agg Lite data feed are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE Arca Agg Lite data feed. Any subscriber, including Redistributor, that chooses to subscribe to the NYSE Arca Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers, including Redistributors, may choose to receive the data on the NYSE Arca Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of \$1,500 for the NYSE Arca Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Arca Agg Lite, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees (\$30 per month

⁴¹ See, e.g., Securities Exchange Act Release No. 72560 (July 8, 2014), 79 FR 40801 (July 14, 2014) (SR-NYSEARCA-2014-72) (establishing tiered Non-Professional User Fees (Per User) for NYSE ArcaBook); Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

per user) from Non-Professional User fees (\$4 per month per user) for display device access to the NYSE Arca Agg Lite data feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.⁴² Offering the NYSE Arca Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Arca Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of \$250 for redistributing the NYSE Arca Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those subscribers that are able to reach the largest audiences of investors, including retail investors, a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for other market data products.⁴³ Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each subscriber will be able to accept or reject the license depending on whether it will or will not lower costs for that particular subscriber, and, if the license is not sufficiently competitive, the Exchange may lose market share. The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants

can readily find substitutes. Accordingly, the Exchange is constrained from introducing a fee that would be inequitable or unfairly discriminatory.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a \$4,500 per month fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to cap non-display use fees for Category 3 at \$13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Arca Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of \$1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE Arca Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the \$200 per month per location fee to data recipients taking the NYSE Arca Agg Lite data feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Arca Agg Lite data feed to new Redistributors for three months is not unfairly discriminatory because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Arca Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is not unfairly discriminatory to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to the NYSE Arca Agg Lite data feed, since Redistributors who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Arca Agg Lite data feed are not unfairly discriminatory.

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

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fees would apply to all subscribers, including Redistributors, of the NYSE Arca Agg Lite data feed, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the

⁴² *Id.*

⁴³ See e.g., Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR-NASDAQ-2018-058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License).

proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (e.g., Category 2 fees apply only to those making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange is constrained by the availability of substitute partial depth of book market data products and by the fact that if its pricing is unattractive, customers will have their pick of alternative partial depth of book market data products to purchase instead of purchasing the Exchange's products.

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. Many other exchanges offer proprietary data feeds like the NYSE Arca Agg Lite data feed, supplying partial depth of book order data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁴⁴ of the Act and subparagraph (f)(2) of Rule 19b-4⁴⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSEARCA-2024-75. 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-NYSEARCA-2024-75 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-21881 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35327; 812-15598]

T. Rowe Price OHA Flexible Credit Income Fund and OHA Private Credit Advisors II, L.P.

September 19, 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.

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f)(2).

⁴⁶ 15 U.S.C. 78s(b)(2)(B).

⁴⁷ 17 CFR 200.30-3(a)(12).

APPLICANTS: T. Rowe Price OHA Flexible Credit Income Fund and OHA Private Credit Advisors II, L.P.

FILING DATES: The application was filed on July 2, 2024, and amended on July 10, 2024, and August 26, 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 Secretaries-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 14, 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: Secretaries-Office@sec.gov. Applicants: Gregory S. Rubin, Esq., OHA Private Credit Advisors II, L.P., 1 Vanderbilt Avenue, 16th Floor, New York, NY 10017, with copies to Richard Horowitz, Esq., Dechert LLP, 1095 Avenue of the Americas New York, New York 10036, and Kaitlin McGrath, Esq., Dechert LLP, 1095 Avenue of the Americas New York, New York 10036.

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 26, 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.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024–21855 Filed 9–24–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101107; File No. SR–NYSE–2024–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for the NYSE Aggregated Lite Data Feed

September 19, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b–4 thereunder, ³ notice is hereby given that, on September 6, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory 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 the NYSE Aggregated Lite data feed. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend the NYSE Proprietary Market Data Fees Schedule (“Fee Schedule”) and establish fees for the NYSE Aggregated Lite (“NYSE Agg Lite”) data feed, ⁴ effective September 6, 2024.⁵

In summary, the NYSE Agg Lite is a NYSE-only frequency-based depth of book market data feed of the NYSE's limit order book for up to ten (10) price levels on both the bid and offer sides of the order book for securities traded on the Exchange and for which the Exchange reports quotes and trades under the Consolidated Tape Association (“CTA”) Plan or the Nasdaq/UTP Plan. The NYSE Agg Lite is a compilation of limit order data that the Exchange provides to vendors and subscribers. The NYSE Agg Lite includes partial depth of book order data as well as security status messages. The security status message informs subscribers of changes in the status of a specific security, such as trading halts, short sale restriction, etc. In addition, the NYSE Agg Lite includes order imbalance information prior to the opening and closing of trading.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.” ⁶

⁴ The proposed rule change establishing the NYSE Agg Lite data feed was immediately effective on February 27, 2024. See Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18466 (March 13, 2024) (SR–NYSE–2024–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Aggregated Lite Market Data Feed).

⁵ The Exchange originally filed to amend the Fee Schedule on May 13, 2024 (SR–NYSE–2024–29). On July 11, 2024, the Exchange withdrew SR–NYSE–2024–29 and replaced it with SR–NYSE–2024–38. On September 6, 2024, the Exchange withdrew SR–NYSE–2024–38 and replaced it with this filing.

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (“Regulation NMS”).

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”⁷ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁸ numerous alternative trading systems,⁹ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).¹⁰

Proposed NYSE Agg Lite Data Feed Fees

The Exchange proposes to establish the fees listed below for the NYSE Agg Lite data feed. The Exchange proposes to charge fees for the same categories of market data use as its affiliated exchanges (namely, NYSE Arca, NYSE American and NYSE National) currently charge. The Exchange believes that adopting the same fee structure as its affiliated exchanges would reduce administrative burdens on market data subscribers that also currently subscribe to market data feeds from the Exchange’s affiliates.

1. *Access Fee.* For the receipt of access to the NYSE Agg Lite data feed, the Exchange proposes to charge \$3,000 per month. This proposed Access Fee would be charged to any data recipient that receives the NYSE Agg Lite data feed. Data recipients that only use display devices to view NYSE Agg Lite market data and do not separately receive a data feed would not be charged an Access Fee. The proposed Access Fee would be charged only once per firm.

2. *User Fees.* The Exchange proposes to charge a Professional User Fee (Per User) of \$35 per month and a Non-Professional User Fee (Per User) of \$6 per month. These user fees would apply

to each display device that has access to the NYSE Agg Lite data feed.

3. *Redistribution Fee.* For redistribution of the NYSE Agg Lite data feed, the Exchange proposes to establish a fee of \$250 per month. The proposed Redistribution Fee would be charged to any Redistributor of the NYSE Agg Lite data feed, which is defined to mean a vendor or any person that provides a real-time NYSE market data product externally to a data recipient that is not its affiliate or wholly-owned subsidiary, or to any system that an external data recipient uses, irrespective of the means of transmission or access. The proposed Redistribution Fee would be charged only once per Redistributor account. As an incentive to potential Redistributors to subscribe to the NYSE Agg Lite data feed, the Exchange proposes to waive the Access Fee and Redistribution Fee for a Redistributor if the Redistributor provides NYSE Agg Lite externally to at least one data feed recipient and reports such data feed recipient or recipients to the Exchange. For example, a Redistributor that subscribes to the NYSE Agg Lite data feed will have the Access Fee and Redistribution Fee waived if such Redistributor provides NYSE Agg Lite externally to at least one data feed recipient and reports such data feed recipient to the Exchange.

By targeting this proposed fee waiver to Redistributors that provide external distribution of NYSE Agg Lite, the Exchange believes that this would provide an incentive for Redistributors to make the NYSE Agg Lite market data product available to its customers. Specifically, if a data recipient is interested in subscribing to NYSE Agg Lite and relies on a Redistributor to obtain market data products from the Exchange, that data recipient would need its Redistributor to subscribe to and redistribute NYSE Agg Lite. The Exchange believes that this proposed fee waiver for Redistributors of NYSE Agg Lite would provide an incentive for Redistributors to make NYSE Agg Lite available to their customers, which will increase the availability of the Exchange’s market data products to a larger potential population of data recipients.

Further, the Exchange proposes to adopt a credit that would be applicable to Redistributors that provide external distribution of NYSE Agg Lite to Professional and Non-Professional Users. As proposed, such Redistributors would receive a credit equal to the amount of the monthly Professional User and Non-Professional User Fees for such external distribution, up to a maximum of the combination of the Access Fee and Redistribution Fee for

NYSE Agg Lite that the Redistributor would otherwise be required to pay to the Exchange. For example, a Redistributor that reports external Professional Users and Non-Professional Users in a month totaling \$3,250 or more would receive a maximum credit of \$3,250 for that month, which could effectively reduce its monthly fee for access and redistribution to zero. If that same Redistributor were to report external User quantities in a month totaling \$600 of monthly usage, that Redistributor would receive a credit of \$600. The Exchange believes the proposed credit would provide Redistributors with an incentive to increase their redistribution of NYSE Agg Lite because the credit they would be eligible to receive would increase if they report additional external User quantities.

4. *Enterprise Fees.* The Exchange proposes to establish an enterprise license that will reduce Exchange fees and administrative costs for subscribers that disseminate NYSE Agg Lite. Subscribers that are broker-dealers will be able to distribute the NYSE Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of \$20,000, with an opportunity to lower that fee to \$18,000 per month if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers will be able to distribute the NYSE Agg Lite data feed for display usage to an unlimited number of recipients (professional users and non-professional users) for a monthly fee of \$25,000, with an opportunity to lower that fee to \$22,500 per month if they contract for twelve months of service in advance.

As proposed, the NYSE Agg Lite data feed may be distributed pursuant to the proposed market data enterprise license only for display usage and in the context of a brokerage relationship with a broker-dealer through such broker-dealer’s own devices. Purchase of an enterprise license would eliminate per User subscriber fees for NYSE Agg Lite. Further, the Exchange proposes to waive the Access Fee and the Redistribution Fee for NYSE Agg Lite for Redistributors that pay either the Non-Professional Enterprise Fee or the Professional and Non-Professional Enterprise Fee. The Exchange believes the proposed fee waiver would provide an incentive for Redistributors to subscribe to the NYSE Agg Lite market data product at the enterprise level to reduce the fees it would pay to the Exchange and without having to report the number of users that receive the data feed from the Redistributor.

⁷ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁸ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fastanswers/divisionsmarketregmrexchangeshtml.html>.

⁹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

¹⁰ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

Subscribers that intend to purchase a market data enterprise license for at least twelve months may elect to purchase this product in advance for a monthly fee of \$18,000 for distribution of NYSE Agg Lite to an unlimited number of non-professional users, or \$22,500 per month for distribution to an unlimited number of professional users and non-professional users. This feature is intended to simplify cost projections and budgeting for both subscribers and the Exchange. Subscribers that elect not to purchase this particular feature will nevertheless be able to obtain all of the market data information offered by NYSE Agg Lite by paying the standard fee of \$20,000 per month for distribution of NYSE Agg Lite to an unlimited number of non-professional users, or \$25,000 per month for distribution to an unlimited number of professional users and non-professional users. Subscribers that elect to pay the monthly fee will be able to switch to the annual fee at any time, and those that elect to purchase the annual contract would be able to change to the monthly contract, with notice, at the end of the twelve-month period.

The Exchange believes that the proposed market data enterprise license will reduce exchange fees, lower administrative costs for subscribers, and help expand the availability of market information to investors, and thereby increase participation in financial markets.

5. Non-Display Use Fees. The Exchange proposes to establish non-display fees for the NYSE Agg Lite data feed that are based on the non-display use categories charged by NYSE Arca, NYSE American, NYSE National, the CTA, and the UTP Plan for non-display use.¹¹ Non-display use would mean accessing, processing, or consuming the

NYSE Agg Lite data feed delivered directly or through a Redistributor, for a purpose other than in support of a data recipient's display or further internal or external redistribution ("Non-Display Use"). Non-Display Use would include trading uses such as high frequency or algorithmic trading as well as any trading in any asset class, automated order or quote generation and/or order pegging, price referencing for algorithmic trading or smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance, and portfolio management.

Under the proposal, for Non-Display Use of NYSE Agg Lite, there would be three categories of, and fees applicable, to data recipients. One, two, or three categories of Non-Display Use may apply to a data recipient.

- As proposed, the Category 1 Fee would be \$4,500 per month and would apply when a data recipient's Non-Display Use of the NYSE Agg Lite data feed is on its own behalf, not on behalf of its clients.
- As proposed, Category 2 Fees would be \$4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Agg Lite data feed on behalf of its clients.
- As proposed, Category 3 Fees would be \$4,500 per month and would apply to a data recipient's Non-Display Use of the NYSE Agg Lite data feed for the purpose of internally matching buy and sell orders within an organization, including matching customer orders for a data recipient's own behalf and/or on behalf of its clients. This category would apply to Non-Display Use in trading platforms, such as, but not restricted to, alternative trading systems ("ATSS"), broker crossing networks, broker crossing systems not filed as ATSSs, dark pools, multilateral trading facilities, exchanges and systematic internalization systems. A data recipient will be charged \$4,500 per month for each platform on which it uses the Non-Display data internally to match buy and sell orders, up to a cap of \$13,500 per month; even if the data recipient uses the NYSE Agg Lite data feed for more than three platforms, it will not pay more than \$13,500 for such Category 3 use per month.

The description of the three non-display use categories is set forth in the Fee Schedule in endnote 1 and that endnote would be referenced in the NYSE Agg Lite data feed fees on the Fee Schedule. The text in the endnote would remain unchanged.

Data recipients that receive the NYSE Agg Lite data feed for Non-Display Use

would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. A firm subject to Category 3 Fees would be required to identify each platform that uses the NYSE Agg Lite data feed for a Category 3 Non-Display Use basis, such as ATSSs and broker crossing systems not registered as ATSSs, as part of the Non-Display Use Declaration.

6. Non-Display Use Declaration Late Fee. Data recipients that receive the NYSE Agg Lite data feed for Non-Display Use would be required to complete and submit a Non-Display Use Declaration before they would be authorized to receive the feed. Beginning in 2025, NYSE Agg Lite data feed recipients would be required to submit, by January 31 of each year, the Non-Display Use Declaration. The requirement to submit a Non-Display Use Declaration applies to all real-time NYSE data feed product recipients. The Exchange proposes to charge a Non-Display Use Declaration Late Fee of \$1,000 per month to any data recipient that pays an Access Fee for the NYSE Agg Lite data feed that has failed to timely complete and submit a Non-Display Use Declaration. Specifically, with respect to the Non-Display Use Declaration due by January 31 of each year, the Non-Display Use Declaration Late Fee would apply to data recipients that fail to complete and submit the Non-Display Use Declaration by the January 31 due date, and would apply beginning February 1 and for each month thereafter until the data recipient has completed and submitted the annual Non-Display Use Declaration.

The proposed Non-Display Use Declaration Late Fee applicable to NYSE Agg Lite data feed would be set forth in endnote 2 on the Fee Schedule. As proposed, endnote 2 would be amended with the proposed addition of the following new text: "The Non-Display Declaration Late Fee will apply, beginning in 2025, to NYSE Aggregated Lite data recipients that fail to complete and submit the annual Non-Display Use Declaration by the January 31st due date, and applies beginning February 1st and for each month thereafter until the data recipient has completed and submitted the annual Non-Display use Declaration."

In addition, if a data recipient's use of the NYSE Agg Lite data feed changes at any time after the data recipient submits a Non-Display Use Declaration, the data recipient must inform the Exchange of the change by completing and submitting at the time of the change an updated declaration reflecting the change of use.

¹¹ See Endnote 1 to the NYSE Arca Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Equities_Proprietary_Data_Fee_Schedule.pdf; Endnote 1 to the NYSE American LLC Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Equities_Market_Data_Fee_Schedule.pdf; Endnote 1 to the NYSE National Equities Proprietary Market Data Fees, available here: https://www.nyse.com/publicdocs/nyse/data/NYSE_National_Market_Data_Fee_Schedule.pdf; Endnote 8 to the Schedule of Market Data Charges for the CTA, available here: <https://www.ctaplan.com/publicdocs/ctaplan/notifications/trader-update/Schedule%20Of%20Market%20Data%20Charges%20-%20January%201,%202015.pdf>; and Non-Display Usage Fees as set forth in the UTP Plan Fee Schedule and Non-Display Policy, available here: <http://utpplan.com/DOC/DataPolicies.pdf>. See, e.g., Securities Exchange Act Release Nos. 69278 (April 2, 2013), 78 FR 20973 (April 8, 2013) (SR-NYSE-2013-25) and 72923 (Aug. 26, 2014), 79 FR 52079 (Sept. 2, 2014) (SR-NYSE-2014-43).

7. *Multiple Data Feed Fee.* The Exchange proposes to establish a monthly fee, the “Multiple Data Feed Fee,” that would apply to data recipients that take a data feed for a market data product in more than two locations. Data recipients taking the NYSE Agg Lite data feed in more than two locations would be charged \$200 per additional location per month. No new reporting would be required.¹²

8. *Three-Month Fee Waiver.* The Exchange currently provides a one-month free trial to any firm that subscribes to a particular NYSE market data product for the first time. Under the current one-month trial, a first-time subscriber is not charged the Access Fee, Non-Display Fee, any applicable Professional and Non-Professional User Fee and Redistribution Fee for one calendar month.¹³ The Exchange now proposes an additional three-month fee waiver for any Redistributor that subscribes to a particular NYSE market data product for the first time for external redistribution. As proposed, a first-time Redistributor would be any firm that has not previously subscribed to and externally redistributed a particular NYSE market data product listed on the Fee Schedule. As proposed, a first-time Redistributor that subscribes to a particular NYSE market data product would not be charged the Access Fee and the Redistribution Fee for that product for three calendar months. Any other fees, including but not limited to, Non-Display Fee, any applicable Professional and Non-Professional User Fee, and Enterprise Fee would be billable after the first calendar month after a first-time Redistributor subscribes to a particular NYSE market data product. For example, a first-time Redistributor that chooses to subscribe to NYSE Agg Lite on September 24, 2024 would not be charged the Access Fee and the Redistribution Fee for the months of October, November, and December 2024. The proposed fee waiver would be for the three calendar months following the date a Redistributor is approved to receive access to the particular NYSE market data product. The Exchange would provide the three-month fee waiver for each particular product to each Redistributor once.

¹² Data vendors currently report a unique Vendor Account Number for each location at which they provide a data feed to a data recipient. The Exchange considers each Vendor Account Number a location. For example, if a data recipient has five Vendor Account Numbers, representing five locations, for the receipt of the NYSE Agg Lite data feed, that data recipient will pay the Multiple Data Feed fee with respect to three of the five locations.

¹³ See Fee Schedule.

The Exchange believes that providing a three-month fee waiver to NYSE market data products listed on the Fee Schedule would enable potential Redistributors to determine whether a particular NYSE market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange’s market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed three-month fee waiver would also provide Redistributors with time to begin onboarding new clients prior to being liable to the Access Fee and the Redistribution Fee, allowing time to choose how to allocate costs and increase revenues to defray costs associated with providing a new feed to its customers.

Application of Proposed Fees

The Exchange is not required to make the NYSE Agg Lite data feed available or to offer any specific pricing alternatives to any customers, nor is any firm required to purchase the NYSE Agg Lite data feed. Firms that choose to purchase the NYSE Agg Lite data feed do so for the primary goals of using it to increase their revenues, reduce their expenses, and in some instances to compete directly with the Exchange (including for order flow). Those firms are able to determine for themselves whether or not the NYSE Agg Lite data feed or any other similar products are attractively priced.

The Exchange believes the proposed rule change would provide an incentive both for data subscribers to subscribe to NYSE Agg Lite and for Redistributors to subscribe to the product for purposes of providing external distribution of NYSE Agg Lite. The Exchange believes that this proposed rule change also has the potential to attract new Redistributors for NYSE Agg Lite.

The proposed fee structure is not novel as it is based on the fee structure currently in place for the NYSE OpenBook feed. The Exchange is proposing fees for the NYSE Agg Lite data feed that are based on the existing fee structure and rates that data recipients already pay for the NYSE OpenBook feed. Specifically, the fees for the NYSE OpenBook feed—which like the NYSE Agg Lite data feed, includes depth of book and security status messages—consist of an Access Fee of \$5,000 per month, a Professional User Fee (Per User) of \$60 per month, a Non-Professional User Fee (Per User) of \$15

per month, Non-Display Fees¹⁴ of \$6,000 per month for each of Categories 1, 2 and 3, and a Redistribution Fee of \$3,000 per month. The Exchange also charges a Non-Display Use Declaration Late Fee of \$1,000 per month and a Multiple Data Feed Fee of \$200 per month for NYSE OpenBook.¹⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁶ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

The Proposed Rule Change Is Reasonable

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁸

With respect to market data, the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* upheld the Commission’s reliance on the existence of competitive market mechanisms to evaluate the reasonableness and fairness of fees for proprietary market data:

In fact, the legislative history indicates that the Congress intended that the market system “evolve through the interplay of competitive forces as unnecessary regulatory restrictions

¹⁴ The Exchange does not anticipate that data recipients would use NYSE Agg Lite for non-display purpose. However, the Exchange is adopting Non-Display use fees so that the proposed fees for NYSE Agg Lite are consistent with the Exchange’s fee structure for its other proprietary market data products.

¹⁵ See NYSE Proprietary Market Data Fees at https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4), (5).

¹⁸ See Regulation NMS Adopting Release, 70 FR 37495, at 37499.

are removed” and that the SEC wield its regulatory power “in those situations where competition may not be sufficient,” such as in the creation of a “consolidated transactional reporting system.”¹⁹

The court agreed with the Commission’s conclusion that “Congress intended that ‘competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.’”²⁰

More recently, the Commission confirmed that it applies a “market-based” test in its assessment of market data fees, and that under that test:

the Commission considers whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees. If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless there is a substantial countervailing basis to find that the terms of the rule violate the Act or the rules thereunder.²¹

As discussed below, the Exchange believes that its proposed fees are constrained by competitive forces.

As the D.C. Circuit recognized in *NetCoalition I*, “[n]o one disputes that competition for order flow is fierce.”²² The court further noted that “no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers,” and that an exchange “must compete vigorously for order flow to maintain its share of trading volume.”²³

As noted above, while Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”²⁴ Indeed, today, equity trading is currently dispersed across 16

exchanges,²⁵ numerous alternative trading systems,²⁶ broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.²⁷

Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market to compete with the Exchange. For example, since 2020, three new ones have entered the market: Long Term Stock Exchange (LTSE), which began operations as an exchange on August 28, 2020;²⁸ Members Exchange (MEMX), which began operations as an exchange on September 29, 2020;²⁹ and Miami International Holdings (MIAx), which began operations of its first equities exchange on September 29, 2020.³⁰

More specifically, in setting fees for the NYSE Agg Lite data feed, the Exchange is constrained by the fact that, if its pricing is unattractive to customers, customers have their pick of alternatives to purchase similar data from instead of purchasing it from the Exchange. The existence of alternatives to the Exchange’s data product ensures that the Exchange cannot set unreasonable market data fees without suffering the negative effects of that decision in the fiercely competitive market for proprietary partial depth of book market data.

The Exchange notes that the NYSE Agg Lite is entirely optional. The Exchange is not required to make the NYSE Agg Lite available to any customers, nor is any customer required to purchase the NYSE Agg Lite market

data feed. Unlike some other data products (e.g., the consolidated quotation and last-sale information feeds) that firms are required to purchase in order to fulfil regulatory obligations,³¹ a customer’s decision whether to purchase the NYSE Agg Lite is entirely discretionary. The Exchange believes NYSE Agg Lite would provide high-quality, comprehensive partial depth of book data that an anticipated end user might use for purposes of identifying an indicative price of Tape A, B, and C securities without having to purchase consolidated data and thus it would not be a latency-sensitive product. The Exchange does not anticipate that an end user would, or could, use NYSE Agg Lite data for purposes of making order-routing or trading decisions. Firms that choose to subscribe to NYSE Agg Lite are able to determine for themselves whether the NYSE Agg Lite data feed is necessary for their business needs, and if so, whether or not it is attractively priced. If the NYSE Agg Lite data feed does not provide sufficient benefit to firms based on the uses those firms may have for it, such firms may simply choose to conduct their business operations in ways that do not use the NYSE Agg Lite data feed.

In setting the proposed fees for the NYSE Agg Lite data feed, the Exchange considered the competitiveness of the market for proprietary partial depth of book data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish reasonable fees. The proposed fees are therefore reasonable because in setting them, the Exchange is constrained by the availability of substitute partial depth of book market data products. The Commission has been clear that substitute products need not be identical, but only substantially similar to the product at hand.³²

³¹ The Exchange notes that broker-dealers are not required to purchase proprietary market data to comply with their best execution obligations. See *In the Matter of the Application of Securities Industry and Financial Markets Association for Review of Actions Taken by Self-Regulatory Organizations*, Release Nos. 34–72182; AP–3–15350; AP–3–15351 (May 16, 2014). Similarly, there is no requirement in Regulation NMS or any other rule that proprietary data be utilized for order routing decisions, and some broker-dealers and ATSS have chosen not to do so.

³² For example, in the National IF Approval Order, the Commission recognized that for some customers, the best bid and offer information from consolidated data feeds may function as a substitute for the NYSE National Integrated Feed product, which contains order by order information. See National IF Approval Order, *supra* note 21, at 67397 [release p. 21] (“[I]nformation provided by NYSE

¹⁹ *NetCoalition v. SEC*, 615 F.3d 525, 535 (D.C. Cir. 2010) (“*NetCoalition I*”) (quoting H.R. Rep. No. 94–229 at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 323).

²⁰ *Id.* at 535.

²¹ See Securities Exchange Act Release No. 34–90217 (October 16, 2020), 85 FR 67392 (October 22, 2020) (SR–NYSENAT–2020–05) (“National IF Approval Order”) (internal quotation marks omitted), quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008).

²² *NetCoalition I*, 615 F.3d at 544 (internal quotation omitted).

²³ *Id.*

²⁴ See Securities Exchange Act Release No. 61358, 75 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

²⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁶ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

²⁷ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

²⁸ See LTSE Market Announcement: MA–2020–020, dated August 14, 2020, announcing LTSE production securities phase-in planned for August 28, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa0698e7_MA-2020-020_Production_Securities_Launching_August_28_-_Google_Docs.pdf and LTSE Market Announcement: MA–2020–025, available here: https://assets-global.website-files.com/6462417e8db99f8baa06952c/6462417e8db99f8baa069873_MA-2020-025.pdf.

²⁹ As of October 29, 2020, MEMX is trading all NMS symbols. See <https://info.memxtrading.com/trader-alert-20-10-memx-trading-symbols-update/>.

³⁰ See MIAx Pearl Press release, dated September 29, 2020, available here: https://www.miaoptions.com/sites/default/files/alert-files/MIAx_Press_Release_09292020.pdf.

The NYSE Aggregated Lite market data feed is subject to significant competitive forces that constrain its pricing. Specifically, the NYSE Agg Lite data feed competes head-to-head with similar market data products currently offered by the four U.S. equities exchanges operated by Cboe Exchange, Inc.—Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”), each of which offers a market data product called BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth and EDGX Summary Depth, respectively (collectively, the “Cboe Summary Depth”).³³ Similar to Cboe Summary Depth, NYSE Agg Lite can be utilized by vendors and subscribers to quickly access and distribute aggregated order book data. As noted above, NYSE Agg Lite, similar to Cboe Summary Depth, would provide aggregated depth per security, including the bid, ask and share quantity for orders received by NYSE, except unlike Cboe Summary Depth, which provides aggregated depth per security for up to five price levels, NYSE Agg Lite would provide aggregated depth per security for up to ten price levels on both the bid and offer sides of the NYSE limit order book as well as auction imbalance data.

The specific fees that the Exchange proposes for the NYSE Agg Lite data feed are reasonable for the following additional reasons.

Overall. The Exchange believes that the proposed fees for the NYSE Agg Lite data feed are reasonable because they would provide vendors and subscribers with the option to subscribe to a market data product that integrates a subset of data from existing products and where such aggregated data is published at a pre-defined interval, thus lowering bandwidth, infrastructure and operational requirements.

The Exchange believes the proposed fees for the NYSE Agg Lite data feed are also reasonable when compared to fees for comparable products, such as the

Cboe Summary Depth.³⁴ Additionally, the Exchange is proposing fees for the NYSE Agg Lite data feed that are based on the existing fee structure that data recipients already pay for the NYSE’s other market data products. The Exchange believes that adopting the same fee structure would reduce administrative burdens on NYSE data subscribers that also currently subscribe to market data feeds from NYSE.

Access Fee. The Exchange believes that the proposed monthly Access Fee of \$3,000 for the NYSE Aggregated Lite data feed is reasonable because it is comparable to the fees charged by BZX, BYX, EDGA, and EDGX, each of which charges between \$2,500 per month to \$5,000 per month for both Internal Distribution and External Distribution of the Cboe Summary Depth market data product.³⁵

User Fees. The Exchange believes that having separate Professional and Non-Professional User fees for the NYSE Agg Lite data feed is reasonable because it will make the product more affordable and result in greater availability to Professional and Non-Professional Users. Setting a modest Non-Professional User fee is reasonable because it provides an additional method for Non-Professional Users to access the NYSE Agg Lite data feed by providing the same data that is available to Professional Users. The proposed monthly Professional User Fee (Per User) of \$35 and monthly Non-Professional User Fee (Per User) of \$6 are reasonable because they are comparable to user fees generally charged by exchanges. For example, NYSE charges a monthly Professional User Fee (Per User) of \$60 and a monthly Non-Professional User Fee (Per User) of \$15 for the NYSE OpenBook feed.³⁶ Although the proposed User Fees for Professional and Non-Professional Users are higher than those charged by BZX, BYX, EDGA and EDGX, the Exchange notes that User fees are only a subset of the total fees that vendors and subscribers pay and the lower fees proposed to access and redistribute NYSE Agg Lite would provide such market data recipients with a more affordable alternative to existing substitutes offered by the Exchange and its competitors.

Redistribution Fees. The Exchange believes that charging a Redistribution Fee is reasonable because the vendors that would be charged such a fee profit

by re-transmitting the Exchange’s market data to their customers. This fee would be charged only once per month to each vendor account that redistributes the NYSE Agg Lite data feed, regardless of the number of customers to which that vendor redistributes the data. The Exchange believes the proposed monthly Redistribution Fee of \$250 for the NYSE Agg Lite data feed is reasonable because it is nominal and lower than the fees charged by BZX, BYX, EDGA and EDGX, each of which charges considerably more for both Internal Distribution and External Distribution of the Cboe Summary Depth market data feed.³⁷

Enterprise Fees. The Exchange believes the proposed enterprise license is reasonable because it would reduce exchange fees, lower administrative costs for subscribers that are broker-dealers and help expand the availability of market information to investors, and thereby increase participation in financial markets. Subscribers that are broker-dealers would be able to disseminate the NYSE Agg Lite data feed for display usage to an unlimited number of non-professional users for a monthly fee of \$20,000, or \$18,000 if they contract for twelve months of service in advance. Alternatively, subscribers that are broker-dealers would be able to disseminate the NYSE Agg Lite data feed for display usage to an unlimited number of professional users and non-professional users for a monthly fee of \$25,000, or \$22,500 if they contract for twelve months of service in advance. The proposed enterprise license would result in lower fees for subscribers able to reach the largest audience of investors, including retail investors. Discounts for broader dissemination of market data information have routinely been adopted by exchanges and permitted by the Commission as equitable allocations of reasonable dues, fees and charges.³⁸

Non-Display Use Fees. Non-display data can be used by data recipients for a wide variety of uses, including proprietary and agency trading and smart order routing, as well as by data recipients that operate order matching and execution platforms. Non-display data also can be used for a variety of non-trading purposes that indirectly support trading, such as risk

National demonstrates that a number of executing broker-dealers do not subscribe to the NYSE National Integrated Feed and executing broker-dealers can otherwise obtain NYSE National best bid and offer information from the consolidated data feeds.” (internal quotations omitted)).

³³ See BZX Rule 11.22(m) BZX Summary Depth; BYX Rule 11.22(k) BYX Summary Depth; EDGA Rule 13.8(f) EDGA Summary Depth; and EDGX Rule 13.8(f) EDGX Summary Depth. The Cboe Summary Depth offered by BZX, BYX, EDGA and EDGX are each a data feed that offers aggregated two-sided quotations for all displayed orders for up to five (5) price levels and contains the individual last sale information, market status, trading status and trade break messages.

³⁴ See https://cdn.cboe.com/resources/membership/US_Market_Data_Product_Price_List.pdf.

³⁵ *Id.*

³⁶ See Fee Schedule.

³⁷ See *supra*, note 34.

³⁸ For example, the Commission has permitted pricing discounts for market data under Nasdaq Rules 7023(c) and 7047(b). See also Securities Exchange Act Release No. 82182 (November 30, 2017), 82 FR 57627 (December 6, 2017) (SR–NYSE–2017–60) (changing an enterprise fee for NYSE BBO and NYSE Trades).

management and compliance. Although some of these non-trading uses do not directly generate revenues, they can nonetheless substantially reduce a recipient's costs by automating such functions so that they can be carried out in a more efficient and accurate manner and reduce errors and labor costs, thereby benefiting recipients. The Exchange believes that charging for non-trading uses is reasonable because data recipients can derive substantial benefit from such uses, for example, by automating tasks so that they can be performed more quickly and accurately and less expensively than if they were performed manually.

The Exchange believes that the proposed fees of \$4,500 per month for each of Categories 1, 2, and 3 is reasonable. These fees are comparable to non-display use fees generally charged by exchanges. For example, the fees for Non-Display Use of NYSE OpenBook for Categories 1, 2 and 3 is \$6,000 per month.³⁹ The Exchange believes that it is reasonable to cap non-display use fees for Category 3 at \$13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Agg Lite data feed.

The proposed Non-Display Use fees for the NYSE Agg Lite data feed are also reasonable because they take into account the usefulness of receiving the data for Non-Display Use on an integrated basis.

Non-Display Use Declaration Late Fee. The Exchange believes that it is reasonable to require annual submissions of the Non-Display Use Declaration so that the Exchange will have current and accurate information about the use of the NYSE Agg Lite data feed and can correctly assess fees for the uses of the NYSE Agg Lite data feed. Requiring annual submissions of such declarations is reasonable because it also allows users to re-assess their own usage each year.

The Exchange believes that it is reasonable to impose a late fee in connection with the submission of the Non-Display Use Declaration. In order to correctly assess fees for the non-display use of the NYSE Agg Lite data feed, the Exchange needs to have current and accurate information about the use of the NYSE Agg Lite data feed. The failure of data recipients to submit the Non-Display Use Declaration on time leads to potentially incorrect billing and administrative burdens, including tracking and obtaining late Non-Display Use Declarations and correcting and following up on

payments owed in connection with late Non-Display Use Declarations. The purpose of the late fee is to incent data recipients to submit the Non-Display Use Declaration promptly to avoid the administrative burdens associated with the late submission of Non-Display Use Declarations.

Multiple Data Feed Fee. The Exchange believes that it is reasonable to require data recipients to pay a modest fee for taking a data feed for a market data product in more than two locations. In addition, there are administrative burdens associated with tracking each location at which a data recipient receives the product. The Multiple Data Feed Fee is designed to encourage data recipients to better manage their requests for additional data feeds and to monitor their usage of data feeds. The proposed fee is designed to apply to data feeds received in more than two locations so that each data recipient can have one primary and one backup data location before having to pay a multiple data feed fee.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Agg Lite data feed to new Redistributors for three calendar months is reasonable because it would enable potential Redistributors to determine whether a particular NYSE market data product is useful to their business models before fully committing to expend development and implementation costs related to the receipt of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Redistributors would ordinarily have to expend before using a product. The proposed fee waiver would also allow Redistributors to become familiar with the feed and determine whether it suits their needs without incurring fees. Making a new market data product available without charging a fee for three months is consistent with offerings of other exchanges. For example, BZX offers subscribers of BZX Summary Depth a three-month credit for external distribution, which is akin to the three-month fee waiver proposed by the Exchange.⁴⁰

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Agg Lite data feed are reasonable.

The Proposed Fees Are Equitably Allocated

The Exchange believes the proposed fees for the NYSE Agg Lite data feed are allocated fairly and equitably among the various categories of users of the feed, and any differences among categories of users are justified.

Overall. The Exchange believes that the proposed fees are equitably allocated because they will apply to all data recipients that choose to subscribe to the NYSE Agg Lite data feed. Any subscriber or vendor that chooses to subscribe to the NYSE Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers and vendors are not required to purchase the NYSE Agg Lite data feed and may choose to receive the data on the NYSE Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of \$3,000 for the NYSE Agg Lite data feed is equitably allocated because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Agg Lite data feed, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees (\$35 per month per user) from Non-Professional User fees (\$6 per month per user) for display device access to the NYSE Agg Lite data feed is equitable. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.⁴¹ Offering the NYSE Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of \$250 for redistributing the NYSE Agg Lite data feed is equitably allocated because it would be charged on an equal

⁴¹ See, e.g., Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983), 48 FR 34552 (July 29, 1983) (establishing Non-Professional fees for CTA data); NASDAQ BX Equity 7 Pricing Schedule, Section 123.

³⁹ See Fee Schedule.

⁴⁰ See e.g., Securities Exchange Act Release No. 94432 (March 16, 2022), 87 FR 16277 (March 22, 2022) (SR-ChoeBZX-2022-015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products).

basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license is equitably allocated because it would be available on an equal basis to all subscribers that are broker-dealers, each of whom would benefit from reduced exchange fees and from lower administrative costs. Moreover, the specific feature of the proposed enterprise license that will allow subscribers to lower fees by subscribing to a twelve-month contract is also an equitable allocation because all subscribers will have the same option of choosing between the stability of a fixed, lower rate, and the more flexible option of maintaining the ability to change market data products after a month of service. Subscribers will be free to move from the monthly to the annual rate at any time, or from annual to a monthly fee, with notice, at the expiration of the twelve-month period.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are equitably allocated because they would require subscribers to pay fees only for the uses they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is equitable to charge non-display data subscribers a \$4,500 fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses of the data paying higher fees, and subscribers with fewer uses of the data paying lower fees. This segmented fee structure is also equitable because no subscriber of non-display data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is equitable to cap non-display use fees for Category 3 at \$13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of \$1,000 per month for a late Non-Display Use Declaration is equitably allocated because it applies to any data recipient that pays an Access Fee for the NYSE Agg Lite data feed but has failed to complete and submit a

Non-Display Use Declaration. In addition, the Exchange believes that it is equitable to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. The Exchange believes it is equitable to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the \$200 per month per location fee to data recipients taking the NYSE Agg Lite data feed in more than two locations is equitable because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is equitable to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is equitable for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Agg Lite data feed to new Redistributors for three calendar months is equitable because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is equitable to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to and redistributed the NYSE Agg Lite data feed, since customers who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Agg Lite data feed are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the NYSE Agg Lite data feed are not unfairly discriminatory because any differences in the application of the fees

are based on meaningful distinctions between customers, and those meaningful distinctions are not unfairly discriminatory between customers.

Overall. The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE Agg Lite data feed. Any subscriber, including Redistributor, that chooses to subscribe to the NYSE Agg Lite data feed is subject to the same Fee Schedule, regardless of what type of business they operate or the use they plan to make of the data feed. Subscribers, including Redistributors, may choose to receive the data on the NYSE Agg Lite data feed regardless of what type of business they operate or the use they plan to make of the data feed.

Access Fee. The Exchange believes the proposed monthly Access Fee of \$3,000 for the NYSE Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to all data recipients that receive a data feed of the NYSE Agg Lite, regardless of what type of business they operate or the use they plan to make of the data feed.

User Fees. The Exchange believes that the fee structure differentiating Professional User fees (\$35 per month per user) from Non-Professional User fees (\$6 per month per user) for display device access to the NYSE Agg Lite data feed is not unfairly discriminatory. This structure has long been used by the Exchange to reduce the price of data to Non-Professional Users and make it more broadly available.⁴² Offering the NYSE Agg Lite data feed to Non-Professional Users with the same data as is available to Professional Users results in greater equity among data recipients. These user fees would be charged uniformly to all display devices that have access to the NYSE Agg Lite data feed.

Redistribution Fees. The Exchange believes the proposed monthly fee of \$250 for redistributing the NYSE Agg Lite data feed is not unfairly discriminatory because it would be charged on an equal basis to those Redistributors that choose to redistribute the feed.

Enterprise Fees. The Exchange believes the proposed enterprise license will not unfairly discriminate between customers, issuers, brokers or dealers. The Act does not prohibit all distinctions among customers, but only discrimination that is unfair, and it is not unfair discrimination to charge those subscribers that are able to reach

⁴² *Id.*

the largest audiences of investors, including retail investors, a lower fee for incremental investors in order to encourage the widespread distribution of market data. This principle has been repeatedly endorsed by the Commission, as evidenced by the approval of enterprise licenses for other market data products.⁴³ Moreover, the proposed enterprise license will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. Each subscriber will be able to accept or reject the license depending on whether it will or will not lower costs for that particular subscriber, and, if the license is not sufficiently competitive, the Exchange may lose market share. The proposed enterprise license will compete with other enterprise licenses of the Exchange, underlying fee schedules promulgated by the Exchange, and enterprise licenses and fee structures implemented by other exchanges. As such, it is a voluntary product for which market participants can readily find substitutes. Accordingly, the Exchange is constrained from introducing a fee that would be inequitable or unfairly discriminatory.

Non-Display Use Fees. The Exchange believes the proposed Non-Display Use fees are not unfairly discriminatory because they would require subscribers for non-display use to pay fees only for the categories of use they actually make of the data. As noted above, non-display data can be used by data recipients for a wide variety of purposes (including trading, risk management, and compliance) as well as purposes that reduce the recipient's costs by automating certain functions. The Exchange believes that it is not unfairly discriminatory to charge non-display data subscribers a \$4,500 per month fee for each category of use they make of such data—namely, using the data on their own behalf (Category 1), on behalf of their clients (Category 2), and to internally match buy and sell orders within an organization (Category 3)—because this fee structure results in subscribers with greater uses for the data paying higher fees, while subscribers with fewer uses of the data pay lower fees. This segmented fee structure is not unfairly discriminatory because no subscriber of non-display

data would be charged a fee for a category of use in which it did not actually engage.

The Exchange believes that it is not unreasonably discriminatory to cap non-display use fees for Category 3 at \$13,500 per month per data recipient, because a higher monthly fee may potentially dissuade subscribers from buying the NYSE Agg Lite data feed.

Non-Display Use Declaration Late Fee. The Exchange believes that the proposed fee of \$1,000 per month for a late Non-Display Use Declaration is not unfairly discriminatory because it applies to any data recipient that pays an Access Fee for the NYSE Agg Lite data feed but has failed to complete and submit a Non-Display Use Declaration. In addition, the Exchange believes that it is not unfairly discriminatory to charge a late fee to subscribers who fail to timely submit their Non-Display Use Declarations because their failure to do so leads to potentially incorrect billing and administrative burdens on the part of the Exchange. Nor is it unfairly discriminatory for the Exchange to defray these administrative costs by imposing a late fee only on subscribers' whose declarations were late, as opposed to all subscribers.

Multiple Data Feed Fee. The Exchange believes that the \$200 per month per location fee to data recipients taking the NYSE Agg Lite data feed in more than two locations is not unfairly discriminatory because it would apply to all such customers, regardless of what type of business they operate or the use they make of the data feed. In addition, the Exchange believes that it is not unfairly discriminatory to charge a fee to subscribers for taking a data feed in more than two locations because there are administrative burdens on the part of the Exchange associated with tracking each location at which a data recipient receives the product. The Exchange believes that it is not unfairly discriminatory for it to defray these administrative costs by imposing a modest fee only on subscribers who seek to take the feed in more than two locations, as opposed to all subscribers.

Three-Month Fee Waiver. The Exchange believes the proposal to waive the Access Fee and the Redistribution Fee for the NYSE Agg Lite data feed to new Redistributors for three months is not unfairly discriminatory because it would apply to any first-time Redistributor, regardless of the use they plan to make of the feed. As proposed, any first-time Redistributor of the NYSE Agg Lite data feed would not be charged the Access Fee and the Redistribution Fee for three calendar months. The Exchange believes it is not unfairly

discriminatory to restrict the availability of this three-month fee waiver to Redistributors that have not previously subscribed to the NYSE Agg Lite data feed, since Redistributors who are current or previous subscribers of the feed are already familiar with it and are able to determine whether it suits their needs.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the NYSE Agg Lite data feed are not unfairly discriminatory.

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

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the proposed fees would apply to all subscribers, including Redistributors, of the NYSE Agg Lite data feed, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue market on competition. As shown above, to the extent that particular proposed fees apply to only a subset of subscribers (e.g., Category 2 fees apply only to those making non-display use on behalf of clients; late fees apply only to customers who fail to timely submit their declarations), those distinctions are not unfairly discriminatory and do not unfairly burden one set of customers over another. To the contrary, by tailoring the proposed fees in this manner, the Exchange believes that it has eliminated the potential burden on competition that might result from unfairly asking subscribers to pay fees for services they did not use, or late fees they did not actually incur.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In setting the proposed fees, the Exchange is constrained by the availability of substitute partial depth of book market data products and by the fact that if its pricing is unattractive, customers will have their pick of alternative partial depth of book market data products to purchase instead of purchasing the Exchange's products.

⁴³ See e.g., Securities Exchange Act Release No. 83751 (July 31, 2018), 83 FR 38428 (August 6, 2018) (SR-NASDAQ-2018-058) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Lower Fees and Administrative Costs for Distributors of Nasdaq Basic, Nasdaq Last Sale, NLS Plus and the Nasdaq Depth-of-Book Products Through a Consolidated Enterprise License).

Specifically, the Exchange believes that the proposed fees do not impose a burden on competition or on other exchanges that is not necessary or appropriate because of the availability of substitute partial depth of book market data products. Many other exchanges offer proprietary data feeds like the NYSE Agg Lite data feed, supplying partial depth of book order data, security status updates, stock summary messages, and the exchange's best bid and offer at any given time, on a real-time basis. Because market data users can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may purchase another market's market data product. These competitive pressures ensure that no one exchange's market data fees can impose an unnecessary burden on competition, and the Exchange's proposed fees do not do so here.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ⁴⁴ of the Act and subparagraph (f)(2) of Rule 19b-4 ⁴⁵ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ⁴⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-54 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSE-2024-54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-54 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-21878 Filed 9-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101111; File No. SR-NYSE-2024-59]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

September 19, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that on September 13, 2024, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Price List to (1) eliminate the current Step Up Tier 3 Adding Credit, and (2) adopt a new pricing tier for Supplemental Liquidity Providers ("SLP") based on Step Up Tier 3 that offers incremental tiered credits for SLP orders providing displayed liquidity in Tapes A, B and C Securities that set the National Best Bid and Offer ("NBBO") or BBO. The Exchange proposes to implement the fee changes effective September 13, 2024. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f)(2).

⁴⁶ 15 U.S.C. 78s(b)(2)(B).

⁴⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend its Price List to (1) eliminate the current Step Up Tier 3 Adding Credit, and (2) adopt a new pricing tier for SLPs based on Step Up Tier 3 that offers incremental tiered credits for SLP orders providing displayed liquidity in Tapes A, B and C Securities that set the NBBO or BBO.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional liquidity to the Exchange, especially aggressively priced orders that improve the market by setting the NBBO or BBO on the Exchange.

The Exchange proposes to implement the fee changes effective September 13, 2024.⁴

Background

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁵

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that

stock.”⁶ Indeed, cash equity trading is currently dispersed across 16 exchanges,⁷ numerous alternative trading systems,⁸ and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.⁹ Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.¹⁰

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the Exchange. The proposed change is designed to continue to attract additional order flow to the Exchange by further incentivizing member organizations that are SLPs to submit additional displayed liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

Proposed Rule Change

The Exchange proposes to eliminate and remove the Step Up Tier 3 Adding Credit from the Price List and adopt tiered incremental credits for SLPs

based on the Step Up Tier 3 Adding Credit that reflect streamlined requirements and higher credits.

Currently, the Exchange provides an incremental \$0.0006 credit in Tapes A, B and C securities for all orders from a qualifying member organization market participant identifier (“MPID”)¹¹ or mnemonic that sets the NBBO¹² or a new BBO¹³ if the MPID or mnemonic:

- has adding average daily volume (“ADV”) in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV,¹⁴ excluding any liquidity added by a DMM, that is at least 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of Tapes A, B and C CADV, and
- is affiliated with an SLP that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and
- has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%

The credit is in addition to the MPID's or mnemonic's current credit for adding liquidity and does not count toward the combined limit on SLP credits of \$0.0032 per share provided for in the incremental credit per share for affiliated SLPs whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003.

As noted above, the Exchange proposes to eliminate this credit and related requirements in their entirety and adopt a more streamlined SLP incremental credit that would be set forth in the section of the Price List titled “Credit Applicable to Supplemental Liquidity Providers (“SLPs”)” under the new proposed heading titled “SLP Incremental Credit.”

As proposed, there would be two SLP setter tiers. Under proposed SLP Setter Tier 1, an SLP that has

- Adding ADV in Tape A securities of at least 0.08% of NYSE CADV, and
 - Adding ADV setting the NBBO or BBO as a percentage of Tape A, B and C CADV combined of at least 0.35%
- would be eligible to receive an incremental credit of \$0.0008 per share for adding orders that set the NBBO or BBO in Tape A securities and an incremental credit of \$0.0006 per share

¹¹ The Exchange proposes to relocate the definition of MPID from the Step Up Tier 3 Adding Credit to the current Step Up Tier 5 Adding Credit.

¹² See Rule 1.1(q) (defining “NBBO” to mean the national best bid or offer).

¹³ See Rule 1.1(c) (defining “BBO” to mean the best bid or offer on the Exchange).

¹⁴ The terms “ADV” and “CADV” are defined in footnote * of the Price List.

⁴ The Exchange originally filed to amend the Price List on September 3, 2024 (SR-NYSE-2024-52). SR-NYSE-2024-52 was withdrawn on September 13, 2024 and replaced by this filing.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

⁶ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

⁷ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmr/exchangesshtml.html>.

⁸ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atslist.htm>.

⁹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share/.

¹⁰ See id.

for adding orders that set the NBBO or BBO in Tape B and C Securities.

Under proposed SLP Setter Tier 2, an SLP that has Adding ADV in Tape A securities of at least 0.08% of NYSE CADV would receive an incremental credit of \$0.0007 per share for adding orders that set the NBBO or BBO in Tape A securities and an incremental credit of \$0.0006 per share for adding orders that set the NBBO or BBO in Tape B and C Securities.

Like the Step Up Tier 3 Adding Credit the Exchange would eliminate, the proposed incremental credits do not count toward the combined limit on SLP credits of \$0.0032 per share provided for in the SLP Adding Tiers whereby SLPs can qualify for incremental credits of \$0.0001, \$0.0002 or \$0.0003.

The purpose of this proposed change is to incentivize member organizations that are SLPs to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or BBO. The proposed SLP Incremental Credit is thus intended to encourage higher levels of liquidity, which would support the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. Because the proposed tier enables an SLP to receive an per share credit if the SLP meets certain trading qualifications and establishes the NBBO or BBO on the Exchange, the Exchange believes that the proposed credit would provide an incentive for SLPs and their affiliates to send additional liquidity to the Exchange to set the NBBO or BBO in order to qualify for it.

The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposed SLP incremental credit is new, the Exchange does not know how many SLPs could qualify for the proposed tiered credits based on their current trading profile on the Exchange. Without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any SLP directing orders to the Exchange in order to qualify for the new setting tier.

Finally, the Exchange would relocate the cap for the maximum average number of shares per day for the billing month in calculating the average

monthly CADV for purposes of the Step Up Adding Tier 3 to the General section at the end of the SLP section of the Price List without substantive change.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,¹⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹⁷ While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."¹⁸

The Proposed Change Is Reasonable

The Exchange believes that a new SLP Incremental Credit is reasonable. Specifically, the Exchange believes that the proposed incremental credits offer streamlined requirements and higher credits than the current Step Up Tier 3 Adding Credit, and thus would provide

an additional incentive for more SLPs to receive an incremental per share credit if the SLP sets the NBBO or BBO on the Exchange and meet certain Adding ADV requirements. The proposed incremental credit would thus provide incentives to member organizations that are SLPs to provide aggressively priced orders that improve the market by setting the NBBO or BBO on the Exchange and to send additional liquidity providing orders to the Exchange in Tape A, B and C securities. To the extent that the proposed change leads to an increase in overall liquidity activity on the Exchange and more competitive pricing, this will improve the quality of the Exchange's market, improve quote spreads and increase its attractiveness to existing and prospective participants.

As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on a public exchange. The Exchange believes it is reasonable to provide higher credits for orders that provide additional liquidity. Moreover, the Exchange believes that providing an incrementally higher credit for adding orders that set the NBBO or the BBO is reasonable because it would encourage additional aggressively priced displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and narrower spreads present on the Exchange. Further, the Exchange believes that requiring member organizations to meet specific Adding ADV requirements as an SLP in order to qualify for the incremental credit is also reasonable because it would encourage additional displayed liquidity on the Exchange and because market participants benefit from the greater amounts of liquidity and narrower spreads present on the Exchange.

Since the proposed SLP Incremental Credit would be new, no member organization currently qualifies for the proposed pricing tiers. As previously noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any SLP qualifying for the tiers. The Exchange believes the proposed credit is reasonable as it would provide an additional incentive for SLPs to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher incremental credits, thereby contributing to depth and market quality on the Exchange. Finally, the Exchange believes that excluding the

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4) & (5).

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

¹⁸ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

proposed incremental credits for NBBO and BBO setting adding volume from the \$0.0032 limit for SLP credits will continue to incentivize improved quoting and tighter spreads. The Exchange notes that all other adding orders from those qualifying SLPs will continue to be subject to the \$0.0032 limit.

The Proposal is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

The Exchange believes that by streamlining the requirements, the proposed SLP Incremental Credit will better allocate the proposed credits fairly among market participants and will incentivize more member organizations to send adding SLP liquidity to the Exchange, which in turn supports the quality of price discovery on the Exchange. The proposed tier will allow SLPs to qualify for a credit by adding liquidity and setting the NBBO or BBO at the stated levels in the requirements. The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery. It is equitable for the Exchange to add additional incentives for member organizations to receive a credit when their orders add liquidity to the Exchange as a means of incentivizing increased liquidity adding activity. An increase in overall liquidity on the Exchange will improve the quality of the Exchange's market and increase its attractiveness to existing and prospective participants.

The Exchange believes that requiring a member organization's SLP to have specific Adding and Setting ADV requirements in order to qualify for the proposed credits would also encourage additional displayed liquidity on the Exchange. Since the proposed SLP Incentive Tier would be new, no SLP currently qualifies for it. As noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any SLP qualifying for the tiers. All member organizations that are SLPs or apply to

be SLPs would be eligible to qualify for the proposed incremental credits if their SLP liquidity meets the Adding ADV requirements in Tapes A, B and C securities. Any market participant that is dissatisfied with the proposed new credit is free to shift order flow to competing venues that provide more favorable pricing or less stringent qualifying criteria. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

The Exchange believes that offering an incremental credit for setting the NBBO or BBO will encourage higher levels of liquidity provision in the price discovery process and is consistent with the overall goals of enhancing market quality, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Proposal is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to provide additional per share credits for activity that encourages the setting of the NBBO or BBO on the Exchange as the proposed credits would be provided on an equal basis to all member organizations that are SLPs or that choose to become SLPs and that add liquidity by meeting the new proposed requirements, who would all be eligible for the same credits on an equal and non-discriminatory basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. As noted, the Exchange intends for the proposal to improve market quality on the Exchange and by extension attract more liquidity to the market, thereby improving market wide quality and price discovery. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. Further, as noted, the Exchange believes the proposal would provide an

incentive for member organizations that are SLPs to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

Further, it should be noted that the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,¹⁹ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁰

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who

¹⁹ 15 U.S.C. 78f(b)(8).

²⁰ See Regulation NMS, 70 FR at 37498–99.

would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) ²¹ of the Act and paragraph (f)(2) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-NYSE-2024-59 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSE-2024-59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-59 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-21882 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101099; File No. SR-Phlx-2024-48]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Definition of Phlx Options Trade Outline

September 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 6, 2024, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to codify the definition of Phlx Options Trade Outline in the Phlx rulebook. This filing also incorporates a previous proposal to adjust fees for Phlx Options Trade Outline for both the End of Day and Intra-Day product.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 200.30-3(a)(12).

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

1. Purpose

The purpose of the proposed rule change is to codify the definition of Phlx Options Trade Outline in the Phlx rulebook. This filing also incorporates a previous proposal to adjust fees for Phlx Options Trade Outline for both the End of Day and Intra-Day product.³

PHLX Options Trade Outline ("PHOTO")

PHOTO⁴ provides aggregate quantity and volume information for trades on the Exchange for all series⁵ during a trading session.⁶ Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position,⁷ characterized by origin type

³ The previously introduced fee proposal was initially filed on July 1, 2024, as SR-Phlx-2024-31. On July 15, 2024, that filing was withdrawn and refiled as SR-Phlx-2024-35. On July 29, 2024, that filing was withdrawn and refiled as SR-Phlx-2024-38. On August 12, 2024, that proposal was withdrawn and replaced with SR-Phlx-2024-41 to incorporate those fees into a filing that codifies the definition of PHLX Options Trade Outline. On August 23, 2024, SR-Phlx-2024-41 was withdrawn and replaced with SR-Phlx-2024-44 to provide additional information. On September 6, 2024, SR-Phlx-2024-44 was withdrawn and replaced with the instant filing to provide further information.

⁴ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (establishing fees for the PHOTO intra-day and end of day products); Securities Exchange Act Release No. 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-154) (establishing fees for PHOTO historical data); Securities Exchange Act Release No. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR-Phlx-2021-58) (changing fees and introducing discount for historical data and license for the external distribution of Derived Data).

⁵ Every options series trades as a distinct symbol; the terms "series" and "symbol" are therefore synonyms.

⁶ PHOTO provides information on electronic trades, but excludes trades made on the PHLX floor.

⁷ PHOTO provides subscribers with the aggregate number of "opening purchase transactions." The term "opening purchase transaction" means an exchange options transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction. See Options 1, Section 1(b)(34). PHOTO will also provide subscribers with the aggregate number of "opening writing transactions." The term "opening writing transaction" means an Exchange options transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction. See Options 1, Section 1(b)(35).

(Customer,⁸ Broker-Dealer,⁹ Market Maker,¹⁰ Firm¹¹ and Professional¹²), and for Customers and Professionals, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position,¹³ characterized by origin type, (Customer, Broker-Dealer, Market Maker, Firm and

⁸ The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Options 1, Section 1(b)(45)). Options 7, Section 1(c).

⁹ The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. Options 7, Section 1(c).

¹⁰ The term "Market Maker" is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. Options 7, Section 1(c). This includes specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs"). A "Streaming Quote Trader" or "SQT" means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. See Options 1, Section 1(b)(54). A "Remote Streaming Quote Trader" or "RSQT" means a Market Maker that is a member affiliated with a Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker ("RMM") pursuant to Options 2, Section 11. A Remote Streaming Quote Organization ("RSQTO") or Remote Market Maker Organization ("RMO") are Exchange member organizations that have qualified pursuant to Options 2, Section 1. See Options 1, Section 1(b)(49).

¹¹ The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at OCC. Options 7, Section 1(c).

¹² The term "Professional" applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Options 7, Section 1(c).

¹³ PHOTO provides subscribers with the aggregate number of "closing purchase transactions" in the affected series. A "closing purchase transaction" means an Exchange options transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction. See Options 1, Section 1(b)(11). PHOTO will also provide subscribers with the aggregate number of "closing sale transactions." A "closing sale transaction" means an Exchange options transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction. See Options 1, Section 1(b)(12).

Professional), and for Customers and Professionals, further subdivided by trade size buckets.

PHLX Options Trade Outline End of Day will also provide opening buy, closing buy, opening sell and closing sell information, which shall include option first trade price, option high trade price, option low trade price, and option last trade price.

End of Day information is available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information is available upon request.

PHOTO provides proprietary Exchange trade data and does not include any intraday trade data from any other exchange.¹⁴ The information provided, both in End of Day and Intraday formats, is not a real-time data feed.

PHOTO is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

This information is available to all market participants, including both members and non-members, for all series and symbols in End of Day, Intra-Day, and historical files (upon request).

The End of Day file is updated during an overnight process with the additional fields described above and is available the following morning. The monthly subscriber fee for the End of Day product is currently \$750.

The Intra-Day product is captured in "snapshots" taken every 10 minutes throughout the trading day, available to subscribers within 2 minutes of the conclusion of each period. Subscribers receive the first calculation at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:39 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, continuing over the course of the trading day. The monthly subscriber fee for the Intra-Day product is currently \$2,500.

PHOTO historical data provides information about the past activity of all option series traded on the Exchange for each trading session conducted during a prior calendar month selected by the subscriber.¹⁵ This data is intended to enhance a purchaser's ability to analyze option trade and volume data, evaluate historical trends in the trading activity

¹⁴ The End of Day report includes a field that presents Total Industry Volume for the Series.

¹⁵ See Securities Exchange Act Release 63351 (November 19, 2010), 75 FR 73140 (November 29, 2010) (SR-Phlx-2010-154).

of a particular option series, and create and test trading models and analytical strategies. Historical files provide the same fields of information as the End of Day and Intraday files, respectively. Historical data is available starting in January 2009.

Products similar to Trade Outline have been available on multiple exchanges for many years and are well-established in the market. Such products are available from Nasdaq Options Market (“NOM”),¹⁶ Nasdaq ISE LLC (“ISE”),¹⁷ Nasdaq GEMX LLC (“GEMX”),¹⁸ Cboe Options Exchange (“Cboe”),¹⁹ NYSE American Options (“NYSE American”),²⁰ NYSE Arca Options (“NYSE Arca”),²¹ BOX Options Market LLC (“BOX”),²² MIAAX Pearl Options Exchange (“Pearl”),²³ and others. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data. The current purchasers of Trade Outline are investment banks, market makers, asset managers and other buy-side investors.

Proposed Changes

Definition of PHOTO

The Exchange proposes to codify the definition of PHOTO. Nothing in this

codification is intended to change the product in any way, but rather is intended to describe the product exactly as it exists. Specifically, the Exchange proposes the following definition:

PHLX Options Trade Outline provides aggregate quantity and volume information for trades on the Exchange for all series during a trading session. Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position, characterized by origin type (Customer, Broker-Dealer, Market Maker, Firm, and Professional), and for Customers and Professionals, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position, characterized by origin type (Customer, Broker-Dealer, Market Maker, Firm, and Professional), and for Customers and Professionals, further subdivided by trade size buckets.

PHLX Options Trade Outline End of Day will also provide opening buy, closing buy, opening sell and closing sell information, which shall include option first trade price, option high trade price, option low trade price, and option last trade price.

End of Day information will be available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information will be available upon request.

Previously Introduced Fee Changes

The Exchange previously proposed to increase the fee for the End of Day product from \$750 to \$850 per month, and the Intra-Day Product from \$2,500 to \$3,000 per month.

The Exchange also proposes to clarify that ad hoc requests for historical data are \$500 per month for End of Day data and \$1,000 per month for Intra-Day data, and that historical data will be available starting in January 2009. These rates will apply to any request for historical data that does not fall within the existing discounts for the most recent 36 months of information for Current Distributors. The proposed language is intended to avoid confusion over fees for historical data, and to specify the availability of such data, but will not change any applicable fees.

In addition, the Exchange proposes to insert a comma after the phrase “or the Intra-Day Product for the current month” into the definition of Current Distributor. The revised sentence will read as follows:

A “Current Distributor” is any firm that purchases either the End of Day Product for the current month, or the Intra-Day Product for the current month, in the same month that the 36 months of historical End of Day or Intra-Day data is ordered.

The change is designed to clarify that the phrase “the same month that the 36 months of historical End of Day or Intra-Day data is ordered” applies to both firms that purchase End of Day data in the current month and firms that purchase Intra-Day data for the current month. The clarification will not change how the fee is charged.

2. Statutory Basis

The Exchange believes that its proposal to codify the definition of PHOTO is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Adding the definition of PHOTO will provide additional clarity and specificity to the Phlx rulebook. Nothing in this codification is intended to change the product or the way it functions, but rather is intended to describe the product exactly as it exists today. Providing additional clarity about an exchange product will help investors make better informed decisions about PHOTO, and therefore will help protect investors and promote the public interest.

Similarly, adding language regarding fees for ad hoc requests for historical data that do not fall within existing discounts for historical data will also provide additional clarity and specificity to the rulebook. Nothing in this codification is intended to change the product or the way it functions, but rather is intended to describe the product as it exists today.

The same holds true for the clarification of the definition of Current Distributor, which is also designed to add clarity and specificity to the rulebook without changing the underlying fees. This additional clarity will help investors make better informed decisions about PHOTO, and thereby help protect investors and promote the public interest.

The Exchange also believes that its proposal to change fees is consistent with Section 6(b) of the Act,²⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,²⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b).

²⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁶ See Nasdaq Stock Market Rules, Options 7, Section 4 (Nasdaq Options Market Data Distributor Fees).

¹⁷ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intra-day).

¹⁸ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intra-day Trade Profile).

¹⁹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

²⁰ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²¹ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²² See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

²³ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade outline products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

As noted above, products similar to Trade Outline have been available on multiple exchanges for many years and are well-established in the market. Such products are available from the Phlx,²⁸ ISE,²⁹ GEMX,³⁰ Cboe,³¹ NYSE American,³² NYSE Arca,³³ BOX,³⁴ Pearl,³⁵ and others.

Trade outline products offer the same categories of data through end of day or intra-day reports. The information provided by one exchange is generally

similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another exchange.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but are not necessary to execute a trade. Customers can, and do, choose to forego the information from Trade Outline or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for trade outline.

As the Commission and courts³⁶ have recognized, “[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”³⁷ Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly

discriminatory.”³⁸ The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”³⁹ Trade Outline is in direct competition with multiple exchanges that offer similar products in end of day and intra-day formats.⁴⁰

Comparability of Proposed Fees

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of Trade Outline is determined in part by the number of underlying transactions reflected in the data. The Phlx Exchange has a market share comparable to the Cboe C1 exchange, which has a market share of approximately 9%, while PHLX has a market share of approximately 10% during the second quarter of 2024.⁴¹ As the Cboe C1 exchange charges \$3,000 for its intra-day product,⁴² the proposed fee of \$3,000 for the PHLX Intra-day product is comparable.

For the end of day trade outline product, Cboe C1 charges \$600.⁴³ The Exchange believes that a fee of \$600 understates the true value of the end of day product. The Intra-day to end of day price ratio for Cboe C1 is 5:1 (\$3,000 v. \$600). Most trade outline products have a lower ratio. EDGX, with an 8% market share, has a ratio of 2:1 (\$1,000 for intra-day data and \$500 for end of day data).⁴⁴ PHLX believes that the proposed end of day fee of \$850 (with a ratio of 3.5:1) better reflects the

²⁸ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

²⁹ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intra-day).

³⁰ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intra-day Trade Profile).

³¹ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

³² See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³³ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEARCA-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³⁴ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

³⁵ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

³⁶ The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” *NetCoalition I* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEARCA-2006-21)).

³⁷ See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEARCA-2006-21).

³⁸ See *id.*

³⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁰ These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIA Options, Pearl, and Emerald.

⁴¹ See NasdaqTrader.com, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴² See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁴³ *Id.*

⁴⁴ *Id.*

relative value of the products, and therefore is proposing a fee of \$850 for its end of day product.

If the Exchange is incorrect in its assessment of the marketplace, current and prospective customers will elect not to purchase Trade Outline.

As noted above, clarifying fees for ad hoc requests for historical data, and the definition of Current Distributor, will not change fees, and therefore will not impact the equitable allocation of reasonable dues, fees and other charges.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant. Trade Outline is available to all market participants, including members and non-members, and all market participants receive the same information in the Trade Outline data feed.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Adding the definition of PHOTO will promote competition by helping investors make better informed decisions about PHOTO. Nothing about the addition of a definition will impact inter-market competition or intra-market competition negatively.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations).

As discussed above, Trade Outline is subject to direct competition from other options exchanges that offer substitutes. Nothing in the proposal would interfere with the ability of any exchange to change its fees.

Intra-Market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Outline is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis.

Adding language to clarify fees for ad hoc requests for historical data, and to clarify the definition of Current Distributor, will not change fees, and will promote competition by better informing investors.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁴⁵ and Rule 19b-4(f)(6)⁴⁶ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁴⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed

rule change may become operative upon filing. The Exchange states that adding the definition of PHOTO will provide additional clarity and specificity to the Phlx rulebook, and nothing in the clarification changes the product or the way it functions, but rather describes the product exactly as it exists today. The Exchange also states that the fees included in this filing have been in effect since July 1, 2024, and waiver of the operative delay will allow application of those fees to continue uninterrupted. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁴⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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-2024-48 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-2024-48. 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

⁴⁵ 15 U.S.C. 78s(b)(3)(A).

⁴⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴⁷ 17 CFR 240.19b-4(f)(6).

⁴⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁴⁹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2024-48 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21871 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35328; 812-15596]

Gemcorp Capital Advisors LLC and Gemcorp Commodities Alternative Products Fund

September 19, 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: Gemcorp Capital Advisors LLC and Gemcorp Commodities Alternative Products Fund.

FILING DATES: The application was filed on June 28, 2024, and amended on July 11, 2024, and August 23, 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 Secretaries-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 14, 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: Secretaries-Office@sec.gov. Applicants: Sally-Jane Miller, sjmiller@gemcorp.net, with a copy to Jonathan Gaines, Esq., Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036.

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 23, 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.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-21857 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101103; File No. SR-NYSECHX-2024-29]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31

September 19, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 9, 2024, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.31 regarding the Minimum Trade Size Modifier. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁵⁰ 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Exchange proposes to amend Rule 7.31 regarding the Minimum Trade Size ("MTS") Modifier.

Rule 7.31(i)(3) provides that a Limit IOC Order, Non-Displayed Limit Order, MPL Order, or Tracking Order may be designated with an MTS Modifier. Rule 7.31(i)(3)(A) currently provides that an MTS must be a minimum of a round lot and that an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order. The Exchange proposes to amend Rule 7.31(i)(3)(A) to provide that an MTS may be an odd lot quantity and thus proposes to eliminate rule text currently providing that an MTS must be a minimum of a round lot and that an order with an MTS of less than one round lot would be rejected. The Exchange believes that restricting the use of the MTS Modifier to round lot sizes only is unnecessary and that providing Participants with the option to use the MTS Modifier with an odd lot quantity could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd-lot order quantities is not novel on the Exchange or other equity exchanges and believes that this proposed change is consistent with other equity exchanges' approaches to the use of instructions similar to the MTS Modifier.⁴

The Exchange also proposes to amend Rule 7.31(i)(3) to include the non-displayed ALO Order as an order type that could be designated with an MTS Modifier. This clarifying change is intended only to reflect current behavior, by providing a complete list of the order types that may be designated with an MTS Modifier. The Exchange notes that the inclusion of the non-displayed ALO Order⁵ as an order type

that may be designated with an MTS Modifier is consistent with the existing use of the MTS Modifier with non-displayed order types such as Non-Displayed Limit Orders and MPL Orders (including MPL-ALO Orders). Moreover, although the non-displayed ALO Order is a Limit Order that is non-displayed, the Exchange believes that specifically including the non-displayed ALO Order in the text of Rule 7.31(i)(3) would reduce ambiguity as to the order types that may be designated with an MTS Modifier.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because it would provide Participants with the option to use the MTS Modifier with odd lot quantities, which could encourage order flow to the Exchange and promote opportunities for order execution on the Exchange, to the benefit of all market participants. The proposed change would also clarify that the MTS Modifier may be used in conjunction with non-displayed ALO Orders, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system by updating Exchange rules to ensure that they reflect the current availability of the MTS Modifier and promoting consistency and specificity in Exchange rules as to the use of such modifier with non-displayed order types. The Exchange notes that the proposed change would not otherwise impact the operation of the MTS

Modifier as provided under current Exchange rules. The Exchange also believes that the proposed change would align Exchange rules with the use of instructions similar to the MTS Modifier on other equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.⁸

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would allow the optional MTS Modifier to be used with an odd lot quantity and accurately reflect the order types that may be designated with an MTS Modifier. The Exchange believes that the proposed change would promote competition among exchanges by offering Participants options available on other equity exchanges and, to the extent the proposed change would increase opportunities for order execution, promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

⁴ The rules of Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), and Members Exchange ("MEMX") appear to permit the use of instructions comparable to the MTS Modifier in any size. See EDGA Rules 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated) and 11.6(h) (defining Minimum Execution Quantity instruction); EDGX Rules 11.2 and 11.6(h) (same); MEMX Rules 11.2 and 11.6(f) (same). See also, e.g., IEX Rule 1190(b)(3) (providing that a non-displayed order may be a Minimum Quantity Order and may be an odd lot order).

⁵ An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book; an ALO Order may be designated as non-displayed. See Rule 7.31(e)(2).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See note 4, *supra*.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect as soon as the technology associated with the proposed change is available, which is anticipated to be less than 30 days from the date of this filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal raises no novel issues and would allow use of the MTS Modifier with odd lot quantities without delay and promote clarity in Exchange rules as to the order types that may be designated with an MTS Modifier. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSECHX-2024-29 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSECHX-2024-29. 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-NYSECHX-2024-29 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21874 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101097; File No. SR-GEMX-2024-35]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify the Definition of GEMX Open/Close End of Day and Intraday Trade Profile

September 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 6, 2024, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to codify the definition of GEMX Open/Close End of Day and Intraday Trade Profile in the GEMX rulebook. This filing also incorporates previously proposed fee changes that: (i) adjusted fees for GEMX Open/Close End of Day and Intraday Trade Profile; (ii) reduced fees for 36 months of historical data for current customers; and (iii) allowed unlimited external distribution of GEMX Open/Close End of Day and Intraday Trade Profile for a fixed monthly fee.

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

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

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to codify the definition of GEMX Open/Close Trade Profile in the GEMX rulebook. This filing also incorporates previously proposed fee changes that: (i) adjusted fees for GEMX Open/Close End of Day and Intraday Trade Profile; (ii) reduced fees for 36 months of historical data for current customers; and (iii) allowed unlimited external distribution of GEMX Open/Close End of Day and Intraday Trade Profile for a fixed monthly fee.³

GEMX Open/Close Trade Profile

The GEMX Open/Close Trade Profile provides over 80 fields of trading and volume data for GEMX-listed options that can be used to create and test trading models and analytical strategies.⁴ This product is designed to provide data to subscribers regarding investor sentiment and trading activity.

The GEMX Open/Close Trade Profile provides aggregate quantity and volume information for trades on the Exchange for all series⁵ during a trading session. Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position, characterized by origin type

(Priority Customer,⁶ Broker-Dealer,⁷ Firm Proprietary,⁸ and Professional Customer⁹), and for Priority Customers and Professional Customers, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position, characterized by origin type (Priority Customer, Broker-Dealer, Firm Proprietary, and Professional Customer), and for Priority Customers and Professional Customers, further subdivided by trade size buckets.

GEMX Open/Close Trade Profile End of Day also provides opening buy, closing buy, opening sell and closing sell information, which includes underlying close, option close, and moneyness.

End of Day information is available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information is available upon request.

The GEMX Open/Close Trade Profile provides proprietary Exchange trade data and does not include any intraday trade data from any other exchange.¹⁰ The information provided, both in End of Day and Intraday formats, is not a real-time data feed.

GEMX Open/Close Trade Profile is a completely voluntary product in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase it only if they voluntarily choose to do so.

This information is available to all market participants, including both members and non-members, for all series and symbols in End of Day, Intra-Day, and historical files (upon request).

Trade Profile data includes "Origin Code" (the type of trader participating in the transaction); opening and closing buys and sells;¹¹ trading volume and

number of trades categorized by day and series;¹² the degree to which a series is "in" or "out" of the "money";¹³ the number of days to expiration; an indication of the degree to which there is "Open Interest"¹⁴ for each series; and a comparison of the volume of trading at GEMX relative to the industry as a whole.

The End of Day file is updated overnight and available for download the following morning.

The Intraday file is captured in "snapshots" taken every 10 minutes throughout the trading day, available to subscribers within 2 minutes of the conclusion of each period. Subscribers receive the first calculation at 9:42 a.m. ET, representing data captured from 9:30 a.m. to 9:39 a.m., and the second calculation at 9:52 a.m., representing data from both the most recent snapshot and previous snapshots, continuing over the course of the trading day.

The End of Day subscription is available for \$500 per month. The Intraday subscription is available for \$1,000 per month. These fees were set in 2017.¹⁵

The GEMX Open/Close Trade Profile is also available as an historical database available upon request.¹⁶ This data is intended to enhance a purchaser's ability to analyze option trade and volume data, evaluate historical trends in the trading activity of a particular option series, and create and test trading models and analytical

¹² Trading volume is the number of contracts traded; the number of trades is the number of transactions.

¹³ The degree to which a series is "in" or "out" of the "money" is identified according to the following five levels of "moneyness": (i) "Deep in the Money" means that the strike price of this option is more than 12% lower than the price of the underlying security if it is a call or more than 12% higher if it is a put; (ii) "In the Money" means that the strike price of this option is within the range of 5%–12% lower than the price of the underlying security if it is a call or within the range of 5%–12% higher if it is a put; (iii) "At the Money" means that the strike price of this option is within the range of 5% higher or lower than the price of the underlying security; (iv) "Out of the Money" means that the strike price of this option is within the range of 5%–12% higher than the price of the underlying security if it is a call or 5%–12% lower if it is a put; and (v) "Deep out of the Money" means that the strike price of this option is more than 12% higher than the price of the underlying security if it is a call or more than 12% lower if it is a put.

¹⁴ "Open Interest" is the total number of outstanding contracts for each series across all options exchanges for the trade date of the file.

¹⁵ See Securities Exchange Act Release No. 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42) (setting current fees for GEMX Open/Close Trade Profile).

¹⁶ See Securities Exchange Act Release No. 80722 (May 18, 2017), 82 FR 23891 (May 24, 2017) (SR-GEMX-2017-13) (establishing fees for historical information on GEMX Open/Close Trade Profile).

³ The previously introduced fee proposal was initially filed on July 1, 2024, as SR-GEMX-2024-19. On July 15, 2024, that filing was withdrawn and refiled as SR-GEMX-2024-24. On July 29, 2024, that filing was withdrawn and refiled as SR-GEMX-2024-26. On August 12, 2024, that proposal was withdrawn and replaced with SR-GEMX-2024-28 to incorporate those fees into a filing that codifies the definition of GEMX Open/Close Trade Profile. On August 23, 2024, SR-GEMX-2024-28 was withdrawn and replaced with SR-GEMX-2024-31 to provide additional information. On September 6, 2024, SR-GEMX-2024-31 was withdrawn and replaced with the instant filing to provide further information.

⁴ See Securities Exchange Act Release No. 81632 (September 15, 2017), 82 FR 44235 (September 21, 2017) (SR-GEMX-2017-42) (setting current fees for GEMX Open/Close Trade Profile).

⁵ Every options series trades as a distinct symbol; the terms "series" and "symbol" are therefore synonyms.

⁶ A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). See Options 7, Section 1(c).

⁷ A "Broker-Dealer" order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. See Options 7 Section 1(c).

⁸ A "Firm Proprietary" order is an order submitted by a member for its own proprietary account. See Options 7 Section 1(c).

⁹ A "Professional Customer" is a person or entity that is not a broker/dealer and is not a Priority Customer. See Options 7 Section 1(c).

¹⁰ The End of Day report includes a field that presents Total Industry Volume for the Series.

¹¹ An opening buy is a transaction that creates or increases a long position and an opening sell is a transaction that creates or increases a short position. A closing buy is a transaction made to close out an existing position. A closing sell is a transaction to reduce or eliminate a long position.

strategies. The historical database provides the same fields of information available for the Intraday and End of Day products, respectively.

End of Day data is available for \$400 per request per month. Intraday information is available in 10-minute increments for \$750 per request per month. Historical data is available starting in August 2013.

Trade Profile is designed to enhance the ability of customers to understand market sentiment on the Exchange and to create and test trading models and analytical strategies useful in both options and equities markets. It is not necessary to execute a trade, but it supplies the customer with information about underlying market trends designed to improve the quality of that customer's investment decisions. Customers can, and often do, elect to forego this information.

Products similar to Trade Profile have been available on multiple exchanges for many years and are well-established in the market. Such products are available from the Nasdaq Phlx LLC ("Phlx"),¹⁷ Nasdaq Options Market ("NOM"),¹⁸ Nasdaq ISE LLC ("ISE"),¹⁹ Cboe Options Exchange ("Cboe"),²⁰ NYSE American Options ("NYSE American"),²¹ NYSE Arca Options ("NYSE Arca"),²² BOX Options Market LLC ("BOX"),²³ MIAX Pearl Options

¹⁷ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

¹⁸ See Nasdaq Stock Market Rules, Options 7, Section 4 (Nasdaq Options Market Data Distributor Fees).

¹⁹ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

²⁰ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open-Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price, and transaction type).

²¹ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²² See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR-NYSEArca-2021-82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²³ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR-BOX-2023-09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

Exchange ("Pearl"),²⁴ and others. In general, the relative value of these products depends on the volume of transactions included; the greater the volume of transactions, the greater the value of the data. The current purchasers of Trade Profile are investment banks, market makers, asset managers and other buy-side investors.

Proposed Changes

Definition of GEMX Open/Close Trade Profile

The Exchange proposes to codify the definition of GEMX Open/Close Trade Profile. Nothing in this codification is intended to change the product in any way, but rather is intended to describe the product exactly as it exists. Specifically, the Exchange proposes the following definition:

GEMX Open/Close Trade Profile provides aggregate quantity and volume information for trades on the Exchange for all series during a trading session. Information is provided in the following categories: (i) total exchange volume for Intra-Day information and total exchange and industry volume for End of Day information for each reported series; (ii) open interest for the series; (iii) aggregate quantity of trades and aggregate trade volume effected to open a position, characterized by origin type (Priority Customer, Broker-Dealer, Firm Proprietary, and Professional Customer), and for Priority Customers and Professional Customers, further subdivided by trade size buckets; and (iv) aggregate quantity of trades and aggregate trade volume effected to close a position, characterized by origin type (Priority Customer, Broker-Dealer, Firm Proprietary, and Professional Customer), and for Priority Customers and Professional Customers, further subdivided by trade size buckets.

GEMX Open/Close Trade Profile End of Day will also provide opening buy, closing buy, opening sell and closing sell information, which shall include option first trade price, underlying close, option close, and moneyness.

End of Day information will be available the next business day. Intra-Day information is updated at 10-minute intervals over the course of the trading day. Historical information will be available upon request.

The purpose of the proposed change is to add clarity and specificity to the GEMX rulebook.

Previously Introduced Fee Changes Fee Changes for End of Day and Intraday Products

The Exchange proposes to increase the fee for the End of Day product from \$500 to \$575, and the Intraday Product from \$1,000 to \$1,500.

²⁴ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR-PEARL-2021-24) (introducing the Open-Close Report).

In addition, the Exchange proposes to insert a comma after the phrase "or the Intraday Product for the current month" into the definition of Current Distributor. The revised sentence will read as follows:

A "Current Distributor" is any firm that purchases either the End of Day Product for the current month, or the Intraday Product for the current month, in the same month that the 36 months of historical End of Day or Intraday data is ordered.

The change is designed to clarify that the phrase "the same month that the 36 months of historical End of Day or Intraday data is ordered" applies to both firms that purchase End of Day data in the current month and firms that purchase Intraday data for the current month. The clarification will not change how the fee is charged.

Discount for Historical Data

The Exchange proposes to offer a discount for historical data for Current Intraday or End of Day Distributors.²⁵ Historical data is currently available for \$400 per request per month for End of Day information, and \$750 per request per month for Intraday information. The Exchange proposes to offer the most recent 36 months of historical data for current end of day product distributors for \$4,800, and the most recent 36 months of historical data for current Intraday product distributors for \$9,000.

These changes would substantially reduce fees for historical data. Under the current fee schedule, 36 months of end of day data at \$400 per month would cost \$14,400. The proposal would reduce this to \$4,800. Thirty-six months of intraday data would cost \$27,000 at the current rate of \$750 per month. The proposal would reduce this to \$9,000. Customers would be able to purchase historical information that exceeds 36 months at the current rates.

The historical data will continue to provide the same categories of information available for current subscribers under the new proposal.

Eligibility for the discount will depend on the type of current subscription. A current purchaser of End of Day data would be eligible for the historical End of Day product at the reduced rate. A current purchaser of the Intraday product would similarly be able to purchase the historical Intraday product at the reduced rate. A purchaser of both the current End of Day and Intraday products would be entitled to

²⁵ The Exchange proposes to define "Current Distributor" as any firm that purchases either the End of Day Product for the current month, or the Intraday Product for the current month in the same month that the 36 months of historical End of Day or Intraday data is ordered.

purchase both types of history at the reduced rate.

The 36-month period will be based on the date of purchase of the current subscription by a Current Distributor. For example, a customer that buys the current End of Day product for the first time in July 2024 would also be able to purchase historical End of Day data for the period July 2021 through July 2024 (inclusive) at the discounted rate.

Similarly, a customer with an existing End of Day subscription that is current in July 2024 would be able to purchase the historical End of Day data from July 2021 through July 2024 at the discounted rate. The same reasoning would apply to Intraday customers.²⁶

The fees for historical data are linked to the current product because effective historical testing requires a comparison of similar products. Effective testing of the End of Day product, for example, requires End of Day historical data, and the same would hold true for Intraday data.

Historical data is useful in analyzing option trade and volume data, evaluating historical trends in the trading activity of a particular option series, and creating and testing trading models and analytical strategies, and is often purchased concurrently with a new subscription to GEMX Open/Close Trade Profile. Many customers use historical data to test their strategies and models, and our discussions with current and former customers and experience indicate that 36 months of data is sufficient for most customer needs, and is an effective baseline for review.

External Distribution of Derived Data

The Exchange proposes to offer a license for the unlimited external distribution of Derived Data from GEMX Trade Profile for \$3,000 per month. Derived Data is “any Information generated in whole or in part from Exchange Information such that the Information generated cannot be reverse engineered to recreate Exchange Information,²⁷ or be used to create other

data that is recognizable as a reasonable substitute for such Exchange Information.”

Fees for external distribution of Derived Data from GEMX Trade Profile are in addition to fees for the End of Day product or the Intraday product, or both, as applicable.

This is a new license; external distribution of Derived Data is not currently permitted. The proposal, based on a similar license offered by the Phlx exchange,²⁸ will allow the external distribution of analytic products derived from GEMX Trade Profile to the general investing public. A similar product is also being proposed for the Nasdaq Options Market and the ISE Exchange.

Experience with Phlx indicates that this license provides an effective mechanism for market data vendors to identify, develop, and sell derived market data products, such as sentiment indicators, harnessing the power of the competitive marketplace to promote innovation. The Exchange expects that this product will have the greatest utility for the general investing public.

2. Statutory Basis

The Exchange believes that its proposal to codify the definition of GEMX Open/Close Trade Profile is consistent with Section 6(b) of the Act,²⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,³⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Adding the definition of GEMX Open/Close Trade Profile will provide additional clarity and specificity to the GEMX rulebook. Nothing in this codification is intended to change the product or the way it functions, but rather is intended to describe the product exactly as it exists today. Providing additional clarity about an exchange product will help investors make better informed decisions about GEMX Open/Close Trade Profile, and therefore will help protect investors and promote the public interest.

(ii) activities of the Exchange; or (iii) other information or data from the Exchange. Information includes, but is not limited to, any element of information used or processed in such a way that Exchange Information or a substitute for such Information can be identified, recalculated or re-engineered from the processed information.

²⁸ See Securities Exchange Act Release No. 93293 (October 12, 2021), 86 FR 57716 (October 18, 2021) (SR-Phlx-2021-58).

²⁹ 15 U.S.C. 78f(b).

³⁰ 15 U.S.C. 78f(b)(5).

Similarly, clarifying the definition of Current Distributor will also add specificity to the rulebook without changing the underlying fees. This additional clarity will help investors make better informed decisions about GEMX Open/Close Trade Profile, and thereby help protect investors and promote the public interest.

The Exchange also believes that its proposal to change fees is consistent with Section 6(b) of the Act,³¹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,³² in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Equitable Allocation of Reasonable Dues, Fees and Other Charges

The proposed changes are an equitable allocation of reasonable dues, fees and other charges because: (i) the trade outline products offered by multiple exchanges are substitutes, and customers are free to choose which product they purchase; and (ii) the proposed fees are comparable to the fees charged by other exchanges, and customers are free to purchase other products if the Exchange has mistaken the value of its product.

Substitution

Products similar to Trade Profile have been available on multiple exchanges for many years and are well-established in the market. Such products are available from Phlx,³³ ISE,³⁴ GEMX,³⁵ Cboe,³⁶ NYSE American,³⁷ NYSE

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(4) and (5).

³³ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121) (introducing PHOTO on September 1, 2010).

³⁴ See Nasdaq ISE Rules, Options 7, Section 10(A) and (B) (Nasdaq ISE Open/Close Trade Profile End of Day; Nasdaq ISE Open/Close Trade Profile Intraday).

³⁵ See Nasdaq GEMX Rules, Options 7, Sections 7(D) (Nasdaq GEMX Open/Close End of Day Trade Profile) and 7(E) (Nasdaq GEMX Open/Close Intraday Trade Profile).

³⁶ See, e.g., Securities Exchange Act Release No. 94913 (May 13, 2022), 87 FR 30534 (May 19, 2022) (SR-Cboe-2022-023) (describing End of Day and Intra-Day Open/Close Data as a summary of trading activity on the exchange at the option level by origin, side of the market, price and transaction type).

³⁷ See, e.g., Securities Exchange Act Release No. 93803 (December 16, 2021), 86 FR 72647 (December 22, 2021) (SR-NYSEAMER-2021-46) (describing the NYSE Options Open/Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

²⁶ A customer may use the proposed historical data discount more than once. For example, a Current Distributor that purchases 36 months of historical data at a discount, but later terminates that subscription, would be eligible to purchase another 36 months of historical data (based on the date of purchase) upon renewing that subscription. (Current Distributors that never terminate would have no need for a second purchase, as they would already possess the most recent months of historical data.).

²⁷ “Exchange Information” is any data or information that has been collected, validated, processed and/or recorded by the Exchange and made available for transmission relating to: (i) Eligible securities or other financial instruments, markets, products, vehicles, indicators, or devices;

Arca,³⁸ BOX,³⁹ MIAx Pearl,⁴⁰ and others.

Trade outline products offer the same categories of data through end of day or intraday reports. The information provided by one exchange is generally similar to that provided by other exchanges because order flow can move from one exchange to another, and market sentiment trends that appear on one exchange are likely to be similar to the sentiment trends on other exchanges. The key differentiator in the quality of the data depends on the volume of transactions on a given exchange; the greater the volume of transactions, the greater the value of the data. Customers can choose not to purchase the trade outline product of one exchange and substitute it for that of another exchange.

Customers can also choose not to purchase a trade outline product at all. Trade outline products are designed to help investors understand underlying market trends to improve the quality of investment decisions, but are not necessary to execute a trade. Customers can, and do, choose to forego the information from Trade Profile or any of its competitor products when making a trade.

Nasdaq and its affiliates have observed that customers purchase sufficient data to provide a view of the market, but not more, as the value of data from each additional exchange yields diminishing returns. As a result, all exchanges are limited in what they will be able to charge for Trade Profile.

As the Commission and courts⁴¹ have recognized, “[i]f competitive forces are

operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.”⁴² Accordingly, “the existence of significant competition provides a substantial basis for finding that the terms of an exchange’s fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.”⁴³ The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁴⁴ Trade Profile is in direct competition with multiple exchanges that offer similar products in end of day and intraday formats.⁴⁵

The license to allow the external distribution of Derived Data, like the purchase of the end of day and intraday licenses, is also subject to competition. Any exchange that wishes to allow distribution of a Derived Data product based on options trading information would be able to do so with an immediately effective fee filing similar to this proposal.

Moreover, as explained above, the proposal is designed to promote the dissemination of a variety of analytical insights—generally used only by investment banks, market makers, asset managers and other buy-side investors—to the general investing public by creating an incentive for market data vendors to identify, develop, and sell such indicators. As such, the proposal

No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.A.N. 321, 323 (internal quotation marks omitted). The court agreed with the Commission’s conclusion that “Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.” *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74771 (December 9, 2008) (SR–NYSEArca–2006–21)).

⁴² See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

⁴³ See *id.*

⁴⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

⁴⁵ These substitute products include NOTO, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe C1, C2, BZX, and EDGX; and Open Close Reports from MIAx Options, Pearl, and Emerald.

will spur competition among not only exchanges, but vendors as well.

The discounted fees for historical data, like the purchase of the end of day, intraday and Derived Data licenses, is also subject to competition. Any exchange that wishes to provide discounts for historical data would be able to do so with an immediately effective fee filing in response.

Comparability of Proposed Fees

The proposed fees are comparable to the fees charged by similarly situated exchanges.

As explained above, the value of Trade Profile is determined in part by the number of underlying transactions reflected in the data. GEMX has a market share comparable to Cboe C2 and MIAx Emerald, at approximately 3% to 4% during the second quarter of 2024.⁴⁶ For intraday products, MIAx Emerald charges \$2,000⁴⁷ and Cboe C2 charges \$1,000.⁴⁸ The proposed fee of \$1,500 is within that range. For End of Day products, MIAx Emerald charges \$600,⁴⁹ and Cboe C2 charges \$500.⁵⁰ The proposed fees of \$575 are within the range of fees charged by these exchanges.

Nasdaq is not aware of another exchange that provides a similar discount for historical data other than its own affiliates. The Phlx exchange, which is affiliated with Nasdaq, offers the most recent 36 months of historical End of Day data to Current Distributors for \$6,000, and the most recent 36 months of Intraday data for \$12,000. The proposed GEMX fees of \$4,800 for 36 months of historical End of Day data and \$9,000 for 36 months of Intraday data are reasonable in comparison to Phlx because GEMX has a much lower market share (approximately 9% for Phlx and about 3% for GEMX).

If the Exchange is incorrect in its assessment, current and prospective customers will elect not to purchase Trade Profile.

⁴⁶ See *NasdaqTrader.com*, “Options Market Statistics,” available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>.

⁴⁷ See MIAx Emerald Options Exchange Fee Schedule as of April 18, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAx_Emerald_Fee_Schedule_04182024.pdf.

⁴⁸ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

⁴⁹ See MIAx Emerald Options Exchange Fee Schedule as of April 18, 2024,” available at https://www.miaxglobal.com/sites/default/files/fee-schedule-files/MIAx_Emerald_Fee_Schedule_04182024.pdf.

⁵⁰ See Cboe DataShop, “Cboe Open-Close Volume Summary,” available at <https://datashop.cboe.com/cboe-options-open-close-volume-summary>.

³⁸ See, e.g., Securities Exchange Act Release No. 93132 (September 27, 2021), 86 FR 54499 (October 1, 2021) (SR–NYSEArca–2021–82) (describing the NYSE Options Open-Close Volume Summary as a volume summary of trading activity on the exchange at the option level by origin, side of the market, contract volume and transaction type).

³⁹ See, e.g., Securities Exchange Act Release No. 97174 (March 21, 2023), 88 FR 18201 (March 27, 2023) (SR–BOX–2023–09) (describing the BOX exchange Open-Close Data report as providing volume by origin, buying/selling, and opening/closing criteria).

⁴⁰ See, e.g., Securities Exchange Act Release No. 91964 (May 21, 2021), 86 FR 28667 (May 27, 2021) (SR–PEARL–2021–24) (introducing the Open-Close Report).

⁴¹ The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition v. SEC* 615 F.3d 525 (D.C. Cir. 2010), upheld the Commission’s reliance upon competitive markets to set reasonable and equitably allocated fees for market data. “In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.” *NetCoalition I* at 535. (quoting H.R. Rep.

As noted above, clarifying the definition of Current Distributor will not change fees, and therefore will not impact the equitable allocation of reasonable dues, fees and other charges.

The Proposal Does Not Permit Unfair Discrimination

Nothing in the proposal treats any category of market participant any differently from any other category of market participant. On the contrary, the proposal expands distribution of Trade Profile beyond investment banks, market makers, asset managers and other buy-side investors to market data vendors and the general investing public. Allowing the distribution of Derived Data to the general investing public will broaden the availability of such information while not treating any current recipient of the product differently in any way. The new fee structure, which modifies fees to reflect current market value and offers historical data at a discount, applies equally to all current and potential distributors. Trade Profile is available to all market participants, including members and non-members, and all market participants receive the same information in the Trade Profile data feed.

With respect to the specific fee changes, it is reasonable and not unfair discrimination to charge an external distributor of Derived Data a \$3,000 licensing fee. Vendors will ordinarily charge a fee to their downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular service, derived data products from the Exchange will be part of a suite of offerings that generally promote sales. External distribution is fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. It is not unfair discrimination to charge a licensing fee for a product that generates downstream revenue.

Nor is it unfair discrimination to allow the redistribution of Derived Data, but not the underlying information, to the general investing public. As explained above, neither exchanges nor vendors ordinarily allow redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution to the customers of customers in the manner of a data feed. Allowing the redistribution of Derived Data provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide access to market sentiment insights that are now generally used by sophisticated

investors. This proposal is therefore not unfair discrimination, but rather allows for more equitable access to market sentiment information for the general investing public.

It is also not unfair discrimination to provide a discount for 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product. Any firm would be able to become a Current Distributor at any time by subscribing to Trade Profile, and would be able to cancel the subscription at any time after receiving the 36 months of historical data for the proposed discounted fee. More specifically, a firm that is not a Current Distributor may obtain access to the 36 months of historical data at a discount by becoming a Current Distributor for a limited time and then terminating the subscription.

It is not unfair discrimination to limit the historical data discount to Current Distributors. Historical information is generally used by Current Distributors to test their strategies and trading models, and Current Distributors are therefore in the best position to benefit from the historical data. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

For all of these reasons, the proposal does not permit unfair discrimination.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Adding the definition of GEMX Open/Close Trade Profile will promote competition by helping investors make

better informed decisions about GEMX Open/Close Trade Profile.

Intermarket Competition

Nothing in the proposal burdens inter-market competition (the competition among self-regulatory organizations).

As discussed above, Trade Profile is subject to direct competition from other options exchanges that offer substitutes. Any of these exchanges can replicate this proposal in full or in part, and nothing in the proposal would interfere with the ability of any exchange to do so.

Intra-Market Competition

Nothing in the proposal burdens intra-market competition (the competition among consumers of exchange data). Trade Profile is available to any customer under the same fee schedule as any other customer, and any market participant that wishes to purchase these products can do so on a non-discriminatory basis. Indeed, the proposal will foster competition by expanding dissemination of data to vendors and the general investing public, and by encouraging more market participants to use Trade Profile data to help inform their investments strategies and analytic models.

Offering the 36 months of historical data to Current Distributors, but not former distributors or firms that have never purchased the product, will not burden competition because non-subscribers are free to purchase a current subscription. Moreover, a firm that is not a Current Distributor may become a Current Distributor and then cancel the product after receiving the historical discount. As such, firms that are not Current Distributors will have an opportunity to pay the same fees for the most recent 36 months of historical data as Current Distributors. Outside of the 36 month period, all firms will have the opportunity to purchase historical data on an ad hoc basis.

Adding language to clarify the definition of Current Distributor will not change fees, and will promote competition by better informing investors.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁵¹ and Rule 19b-4(f)(6)⁵² thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁵³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁵⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that adding the definition of GEMX Open/Close Trade Profile will provide additional clarity and specificity to the GEMX rulebook, and nothing in the clarification changes the product or the way it functions, but rather describes the product exactly as it exists today. The Exchange also states that the fees included in this filing have been in effect since July 1, 2024, and waiver of the operative delay will allow application of those fees to continue uninterrupted. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.⁵⁵

⁵¹ 15 U.S.C. 78s(b)(3)(A).

⁵² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵³ 17 CFR 240.19b-4(f)(6).

⁵⁴ 17 CFR 240.19b-4(f)(6)(iii).

⁵⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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-2024-35 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-2024-35. 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-2024-35 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101102; File No. SR-NYSE-2024-26]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31

September 19, 2024.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on September 9, 2024, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.31 regarding the Minimum Trade Size Modifier. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

⁵⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend Rule 7.31 regarding the Minimum Trade Size ("MTS") Modifier.

Rule 7.31(i)(3) provides that a Limit IOC Order, Non-Displayed Limit Order, MPL Order, or Tracking Order may be designated with an MTS Modifier. Rule 7.31(i)(3)(A) currently provides that an MTS must be a minimum of a round lot and that an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order. The Exchange proposes to amend Rule 7.31(i)(3)(A) to provide that an MTS may be an odd lot quantity and thus proposes to eliminate rule text currently providing that an MTS must be a minimum of a round lot and that an order with an MTS of less than one round lot would be rejected. The Exchange believes that restricting the use of the MTS Modifier to round lot sizes only is unnecessary and that providing ETP Holders with the option to use the MTS Modifier with an odd lot quantity could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd-lot order quantities is not novel on the Exchange or other equity exchanges and believes that this proposed change is consistent with other equity exchanges' approaches to the use of instructions similar to the MTS Modifier.⁴

The Exchange also proposes to amend Rule 7.31(i)(3) to include the non-displayed ALO Order as an order type that could be designated with an MTS Modifier. This clarifying change is intended only to reflect current behavior, by providing a complete list of

the order types that may be designated with an MTS Modifier. The Exchange notes that the inclusion of the non-displayed ALO Order⁵ as an order type that may be designated with an MTS Modifier is consistent with the existing use of the MTS Modifier with non-displayed order types such as Non-Displayed Limit Orders and MPL Orders (including MPL-ALO Orders). Moreover, although the non-displayed ALO Order is a Limit Order that is non-displayed, the Exchange believes that specifically including the non-displayed ALO Order in the text of Rule 7.31(i)(3) would reduce ambiguity as to the order types that may be designated with an MTS Modifier.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because it would provide ETP Holders with the option to use the MTS Modifier with odd lot quantities, which could encourage order flow to the Exchange and promote opportunities for order execution on the Exchange, to the benefit of all market participants. The proposed change would also clarify that the MTS Modifier may be used in conjunction with non-displayed ALO Orders, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system by updating Exchange

rules to ensure that they reflect the current availability of the MTS Modifier and promoting consistency and specificity in Exchange rules as to the use of such modifier with non-displayed order types. The Exchange notes that the proposed change would not otherwise impact the operation of the MTS Modifier as provided under current Exchange rules. The Exchange also believes that the proposed change would align Exchange rules with the use of instructions similar to the MTS Modifier on other equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.⁸

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would allow the optional MTS Modifier to be used with an odd lot quantity and accurately reflect the order types that may be designated with an MTS Modifier. The Exchange believes that the proposed change would promote competition among exchanges by offering ETP Holders options available on other equity exchanges and, to the extent the proposed change would increase opportunities for order execution, promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the

⁴ The rules of Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), and Members Exchange ("MEMX") appear to permit the use of instructions comparable to the MTS Modifier in any size. See EDGA Rules 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated) and 11.6(h) (defining Minimum Execution Quantity instruction); EDGX Rules 11.2 and 11.6(h) (same); MEMX Rules 11.2 and 11.6(f) (same). See also, e.g., IEX Rule 1190(b)(3) (providing that a non-displayed order may be a Minimum Quantity Order and may be an odd lot order).

⁵ An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the Exchange Book; an ALO Order may be designated as non-displayed. See Rule 7.31(e)(2).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See note 4, *supra*.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act ¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) ¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect as soon as the technology associated with the proposed change is available, which is anticipated to be less than 30 days from the date of this filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal raises no novel issues and would allow use of the MTS Modifier with odd lot quantities without delay and promote clarity in Exchange rules as to the order types that may be designated with an MTS Modifier. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAT-2024-26 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-NYSEAT-2024-26. 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-NYSEAT-2024-26 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21873 Filed 9-24-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101104; File No. SR-NYSEARCA-2024-78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31-E

September 19, 2024.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 9, 2024, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 7.31-E regarding the Minimum Trade Size Modifier. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

¹⁵ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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

1. Purpose

The Exchange proposes to amend Rule 7.31–E regarding the Minimum Trade Size (“MTS”) Modifier.

Rule 7.31–E(i)(3) provides that a Limit IOC Order, Non-Displayed Limit Order, MPL Order, or Tracking Order may be designated with an MTS Modifier. Rule 7.31–E(i)(3)(A) currently provides that an MTS must be a minimum of a round lot and that an order with an MTS Modifier will be rejected if the MTS is less than a round lot or if the MTS is larger than the size of the order. The Exchange proposes to amend Rule 7.31–E(i)(3)(A) to provide that an MTS may be an odd lot quantity and thus proposes to eliminate rule text currently providing that an MTS must be a minimum of a round lot and that an order with an MTS of less than one round lot would be rejected. The Exchange believes that restricting the use of the MTS Modifier to round lot sizes only is unnecessary and that providing ETP Holders with the option to use the MTS Modifier with an odd lot quantity could increase liquidity and enhance opportunities for order execution on the Exchange. The Exchange notes that permitting odd-lot order quantities is not novel on the Exchange or other equity exchanges and believes that this proposed change is consistent with other equity exchanges’ approaches to the use of instructions similar to the MTS Modifier.⁴

The Exchange also proposes to amend Rule 7.31–E(i)(3) to include the Discretionary Pegged Order and non-displayed ALO Order as order types that could be designated with an MTS Modifier. This clarifying change is intended only to reflect current behavior, by providing a complete list of the order types that may be designated with an MTS Modifier. The Exchange notes that inclusion of the Discretionary Pegged Order would align Rule 7.31–E(i)(3) with the rules of its affiliate, NYSE American LLC (“NYSE

American”), which already provide that a Discretionary Pegged Order may be designated with an MTS Modifier,⁵ thereby promoting consistency in the rules of affiliated exchanges as to the same order type. The Exchange also believes that the inclusion of the non-displayed ALO Order⁶ as an order type that may be designated with an MTS Modifier is consistent with the existing use of the MTS Modifier with non-displayed order types such as Non-Displayed Limit Orders and MPL Orders (including MPL–ALO Orders). Moreover, although the non-displayed ALO Order is a Limit Order that is non-displayed, the Exchange believes that specifically including the non-displayed ALO Order in the text of Rule 7.31–E(i)(3) would reduce ambiguity as to the order types that may be designated with an MTS Modifier.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update, which, subject to effectiveness of this proposed rule change, will be no later than in the fourth quarter of 2024.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because it would provide ETP Holders with the option to use the MTS Modifier with odd lot quantities, which could encourage order flow to the Exchange and promote opportunities for order execution on the Exchange, to the

benefit of all market participants. The proposed change would also clarify that the MTS Modifier may be used in conjunction with Discretionary Pegged Orders and non-displayed ALO Orders, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system by updating Exchange rules to ensure that they reflect the current availability of the MTS Modifier and promoting consistency and specificity in Exchange rules as to the use of such modifier with non-displayed order types, as well as consistency with the rules of an affiliated exchange with respect to the Discretionary Pegged Order. The Exchange notes that the proposed change would not otherwise impact the operation of the MTS Modifier as provided under current Exchange rules. The Exchange also believes that the proposed change would align Exchange rules with the use of instructions similar to the MTS Modifier on other equity exchanges, thereby removing impediments to, and perfecting the mechanism of, a free and open market and a national market system.⁹

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would allow the optional MTS Modifier to be used with an odd lot quantity and accurately reflect the order types that may be designated with an MTS Modifier. The Exchange believes that the proposed change would promote competition among exchanges by offering ETP Holders options available on other equity exchanges and, to the extent the proposed change would increase opportunities for order execution, promote competition by making the Exchange a more attractive venue for order flow and enhancing market quality for all market participants.

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

No written comments were solicited or received with respect to the proposed rule change.

⁴ The rules of Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), and Members Exchange (“MEMX”) appear to permit the use of instructions comparable to the MTS Modifier in any size. See EDGA Rules 11.2 (providing that orders are eligible for odd-lot, round-lot, and mixed-lot executions unless otherwise indicated) and 11.6(h) (defining Minimum Execution Quantity instruction); EDGX Rules 11.2 and 11.6(h) (same); MEMX Rules 11.2 and 11.6(f) (same). See also, e.g., IEX Rule 1190(b)(3) (providing that a non-displayed order may be a Minimum Quantity Order and may be an odd lot order).

⁵ See NYSE American Rule 7.31E(i)(3) (“A Limit IOC Order, Non-Displayed Limit Order, MPL Order, Tracking Order, Non-Displayed Primary Pegged Order, or Discretionary Pegged Order may be designated with an MTS Modifier.”).

⁶ An ALO Order is a Non-Routable Limit Order that, unless it receives price improvement, will not remove liquidity from the NYSE Arca Book; an ALO Order may be designated as non-displayed. See Rule 7.31–E(e)(2).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See note 4, *supra*.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6)(iii) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect as soon as the technology associated with the proposed change is available, which is anticipated to be less than 30 days from the date of this filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal raises no novel issues and would allow use of the MTS Modifier with odd lot quantities without delay and promote clarity in Exchange rules as to the order types that may be designated with an MTS Modifier. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁶

At any time within 60 days of the filing of such proposed rule change, the

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2024-78. 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-NYSEARCA-2024-78 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-21875 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101105; File No. SR-CboeBYX-2024-009]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 11.25(e) To Allow Users To Utilize the Exchange's Match Trade Prevention Functionality When Entering Periodic Auction Orders Onto the Exchange for Execution

September 19, 2024.

On June 6, 2024, Cboe BYX Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 11.25(e) ("Priority and Execution of Orders") to allow Users to utilize the Exchange's Match Trade Prevention functionality when entering Periodic Auction Orders onto the Exchange for execution. The proposed rule change was published for comment in the **Federal Register** on June 21, 2024.³ On August 5, 2024, the Commission extended the time period within which to approve, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78s(b)(2)(B).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100337 (June 14, 2024), 89 FR 52148 ("Notice").

rule change to September 19, 2024.⁴ On September 18, 2024, the Exchange filed Amendment No. 1 to the proposed rule change.⁵

The Commission is publishing this notice and to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Exchange's Description of the Proposal, as Modified by Amendment No. 1

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to amend Exchange Rule 11.25(e) ("Priority and Execution of Orders") to allow (1) Users to utilize the Exchange's Match Trade Prevention ("MTP") functionality when entering Periodic Auction Orders onto the Exchange for execution and (2) add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied. This Amendment No. 1 replaces SR-CboeBYX-2024-009 ("Initial Filing")⁷ as originally filed and supersedes the Initial Filing in its entirety. The text of the proposed rule changes 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/byx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

⁴ See Securities Exchange Act Release No. 100649 (August 9, 2024), 89 FR 65420. The Commission has received no comment letters on the proposed rule change.

⁵ Amendment No. 1 modifies the proposed rule change by: (1) amending rule text relating to Exchange Match Trade Prevention functionality when entering Periodic Auction Orders onto the Exchange for execution; and (2) adding new rule text describing how the Exchange will handle Periodic Auction Orders entered as a Minimum Quantity Order with a Match Trade Prevention modifier.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 100337 (June 14, 2024), 89 FR 52148 (June 21, 2024) (SR-CboeBYX-2024-009).

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

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

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

1. Purpose

The Exchange proposes to (1) amend Rule 11.25(e) to allow Users⁸ to utilize the Exchange's Match Trade Prevention ("MTP") functionality when entering Periodic Auction Orders⁹ onto the Exchange for execution,¹⁰ and (2) add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

By way of background, MTP is an existing process¹¹ through which Users can prevent their incoming orders designated with a MTP modifier from

executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifier, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a "Unique Identifier").¹² Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. MTP is a valuable tool for Exchange Users because it allows them to better manage order flow and prevent undesirable trading activity such as wash sales¹³ or self-trades¹⁴ that may occur because of the high-speed nature of trading in today's marketplace.

Currently, Rule 11.25(e) states that all MTP modifiers (as defined in Rule 11.9(f)(1)–(5)) for Periodic Auction Orders will be ignored for executions occurring during a Periodic Auction. As part of the Exchange's prior Periodic Auction Rule filings,¹⁵ the Exchange reasoned that MTP is mainly designed for use on the Continuous Book,¹⁶ and use of MTP for Periodic Eligible Orders¹⁷ and Periodic Auction Only

¹² See Rule 11.9(f)—Match Trade Prevention ("MTP") Modifiers.

¹³ A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

¹⁴ Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02, available at: <https://www.finra.org/rules-guidance/rulebooks/finra-rules/5210>.

¹⁵ See Securities and Exchange Act Release No. 34-91423 (March 26, 2021), 86 FR 17230 (April 1, 2021) (SR-CboeBYX-2020-021).

¹⁶ The term "Continuous Book" shall mean an order on the BYX Book that is not a Periodic Auction Order, and the term "Continuous Book" shall mean the System's electronic file of such Continuous Book Orders. See Rule 11.25(a)(2), definition of "Continuous Book Order".

¹⁷ A "Periodic Auction Eligible Order" is a non-displayed limit order eligible to trade on the Continuous Book that is entered with an instruction to also initiate a Periodic Auction, if possible. . . . Periodic Auction Eligible Orders will be ranked as Non-Displayed Limit Orders consistent with the priority of order outlined in Rule 11.12(a). An incoming Periodic Auction Eligible Order that is eligible both to trade on the Continuous Book and initiate a Periodic Auction against a Periodic Auction Only Order at the same price will trade immediately with the Continuous Book. Incoming Periodic Auction Eligible Orders will upon entry

Continued

Orders¹⁸ (collectively, Periodic Auction Orders) may complicate the execution of an auction that requires the pooling and matching of multiple orders against other orders at the Periodic Auction Book Price.¹⁹ Based on User feedback, however, Users of Periodic Auctions desire the ability to utilize MTP for their Periodic Auction Orders (when the Periodic Auction is *not* in progress) to help them manage their order flow and prevent undesirable executions against themselves. Users are not asking to utilize MTP for their Periodic Auction Orders when a Periodic Auction is occurring.

Accordingly, the Exchange now seeks to allow Users to utilize MTP when entering Periodic Auction Orders onto the Exchange.²⁰ Importantly, allowing Users to designate Periodic Auction Orders with MTP modifiers will *not* impact how the Periodic Auction itself is conducted, and the proposed MTP functionality will not prevent the completion of a Periodic Auction once it has been initiated.

As proposed, however, there will be instances where the Exchange has elected to temporarily bypass a User's MTP instruction. These instances are demonstrated in Examples 5 and 8, below, and generally involve scenarios where (i) a Periodic Auction is in progress, and the temporary bypassing of the MTP modifier on Firm A's inbound Continuous Book Order is

interact with Continuous Book Orders and other Periodic Auction Eligible Orders according to their rank under Rule 11.12(a). Periodic Auction Eligible Orders will not trade on the Continuous Book during a Periodic Auction Period in the security." See 11.25(b)(2).

¹⁸ "A 'Periodic Auction Only Order' is a non-displayed limit order entered with an instruction to participate solely in Periodic Auctions pursuant to this Rule 11.25. Periodic Auction Only Orders are not eligible for executions on the Continuous Book." See Rule 11.25(b)(1). Hereinafter, Periodic Auction Only Orders as, "PAO Orders."

¹⁹ "The term 'Periodic Auction Book Price' shall mean the price within the Collar Price Range at which the most shares from the Periodic Auction Book would match. In the event of a volume-based tie at multiple price-levels, the Periodic Auction Book Price will be the price that results in the minimum total imbalance. In the event of a volume-based tie and a tie in minimum total imbalance at multiple price levels, the Periodic Auction Book Price will be the price closest to the Volume Based Tie Breaker. The Periodic Auction Book Price will be expressed in the minimum increment for the security unless the midpoint of the NBBO establishes the Periodic Auction Book Price." See 11.25(a)(5), definition of "Periodic Auction Book Price".

²⁰ The Exchange notes that previous proposals extending the functionality of MTP to other trading scenarios were effective upon filing with the Commission. See Securities and Exchange Act Release No. 53429 (December 3, 2010), 75 FR 76763 (December 9, 2010) (SR-EDGX-2010-18); see also Securities and Exchange Act Release No. 34-96292 (November 10, 2020), 87 FR 68766 (November 16, 2022) (SR-CboeEDGX-2022-048).

necessary to prevent the cancellation of Firm A's Periodic Auction Order with an MTP modifier that is currently participating in the Periodic Auction, or (ii) a Periodic Auction is in progress, and the bypassing of Firm A's MTP modifier on its inbound Periodic Auction Order is necessary to prevent—depending on the relevant MTP instruction—the cancellation of Firm A's resting Continuous Book Order, or the cancellation of the inbound Periodic Auction Order itself, preventing such order from participating in the Periodic Auction.

In each instance, the temporary bypassing of the inbound order's MTP modifier is intended to prevent the cancellation of orders where an immediate execution would not occur. Importantly, the bypassing of an inbound order's MTP modifier is *temporary* and occurs only upon entry of the inbound order. The Exchange believes this behavior is necessary and appropriate to help strike a responsible balance between providing Users with an optional risk tool to prevent undesirable executions and ensuring that Periodic Auctions will complete. Moreover, the current architecture and design of Exchange Systems require that MTP for Periodic Auctions function as described.

Additionally, the Exchange proposes to add new rule text providing that in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (e.g., Order 1), and such Periodic Auction Order could either trade with a contra-side Continuous Book Order or initiate a Periodic Auction with a contra-side Periodic Auction Order (e.g., Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply MTP regardless of whether the Minimum Quantity is satisfied.

To illustrate how Periodic Auction Orders designated with MTP modifiers will behave, the Exchange offers the following examples:²¹

²¹ For each example, assume that all trade prices are within the National Best Bid or National Best Offer ("NBBO"). Additionally, note that while Exchange Rule 11.9(f) provides for various MTP modifiers—including Cancel Newest, Cancel Oldest, Decrement and Cancel, Cancel Both, and Cancel Smallest—the Examples provided in this rule filing only demonstrate how certain of these modifiers will operate. Including examples for every possible MTP scenario would be difficult to efficiently demonstrate in a rule filing. Nevertheless, the MTP modifier exemplified in the provided Examples is not critical to understanding how the proposed functionality will operate because as demonstrated below, when a Periodic Auction is not in progress MTP will operate as it does today, and when a Periodic Auction is in progress, the System will, as described below, temporarily bypass an order's MTP instruction.

Example 1: Two PAE Orders Matching—MTP Action Occurs

Example 1 illustrates how MTP will operate when Firm A's resting PAE Order with an MTP modifier of MTP Cancel Oldest ("MCO"),²² interacts with a subsequent inbound PAE Order submitted by Firm A with an MTP modifier of MCO and a Periodic Auction is *not* in progress. Here, MTP operates in the same manner²³ as it would for Continuous Book Orders; *i.e.*, because Firm A's inbound PAE Order was entered with an MTP modifier of MCO, the System will cancel Firm A's Order 1,²⁴ which is the "oldest" contra-side Firm A order that is marketable versus Firm A's inbound PAE Order to sell. This MTP action prevents Firm A from potentially trading with itself either on the Continuous Book or during a Periodic Auction.²⁵

- *Order 1—Resting (Firm A): PAE Order (MTP = Cancel Oldest), Buy 100 @1.00*
- *Order 2—Inbound order (Firm A): PAE Order (MTP = Cancel Oldest), Sell 200 @1.00*
- *Result: Order 1 is canceled.*

²² MTP Cancel Oldest ("MCO") is defined as "[a]n incoming order marked with the 'MCO' modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The resting order marked with the MCO modifier will be cancelled back to the originating User(s). The incoming order marked with the MCO modifier will remain on the BYX Book. See Rule 11.9(f)(2).

²³ See Rule 11.9(f)—Match Trade Prevention ("MTP") Modifiers. Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifiers, trading group identifier, Exchange Sponsored Participant identifier, affiliate identifier, or Multiple Access identifier (any such identifier, a "Unique Identifier"). The order canceled by the System will depend on the incoming order's MTP modifier, as described in 11.9(f)(1)–(5).

²⁴ See Rule 11.9(f)(2).

²⁵ As MTP action is controlled by the incoming order ("... the MTP modifier on the incoming order controls the interaction between two orders marked with MTP modifiers." See Rule 11.21(g)), Firm A's Order 1 was correctly cancelled in this situation. Note, however, that if Firm A's Order 2 had included an MTP modifier of MTP Cancel Newest ("MCN"), the result would simply be that Order 2 is instead canceled. MTP Cancel Newest ("MCN") is defined as "[a]n incoming order marked with the 'MCN' modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The incoming order marked with the MCN modifier will be cancelled back to the originating User(s). The resting order marked with an MTP modifier will remain on the BYX Book." See Rule 11.9(f)(1). Similarly, if we changed Order 1's MTP Modifier to Cancel Newest and Order 2 remained as MTP Cancel Oldest, Order 1 would be canceled as Order 2's instruction controls MTP action.

Example 2: Two PAO Orders Matching—MTP Action Occurs

Example 2 illustrates how MTP will operate when Firm A's resting PAO Order with an MTP Modifier of MCN, interacts with Firm A's inbound PAO Order with an MCN modifier, and a Periodic Auction is *not* in progress. Here, MTP operates in the same manner²⁶ as it would for Continuous Book Orders; *i.e.*, because Firm A has designated its inbound Order 2 with MCN, the System will cancel Firm A's Order 2,²⁷ which is Firm's A's newest contra-side order that is marketable versus Firm A's resting Order 1. This MTP action prevents Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1—Resting (Firm A): PAO Order (MTP = Cancel Newest), Buy 100 @1.00*
- *Order 2—Inbound order (Firm A): PAO Order (MTP = Cancel Newest), Sell 200 @1.00*
- *Result: Order 2 is canceled*

For the sake of clarity, the Exchange also wishes to explain what would happen to Order 2 if a Periodic Auction was in progress when Order 2 arrived.²⁸ To address this scenario, assume an inbound Periodic Auction Order from Firm B—Order X—arrived between Order 1 and Order 2, and initiated a Periodic Auction with Order 1. Here, when Order 2 arrives, and the Periodic Auction is in progress, Order 2 would still be canceled. When a Periodic Auction is in progress, and an inbound Periodic Auction Order is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order originating from the same Unique Identifier that is also designated with a MTP modifier, the inbound Periodic Auction Order will be canceled. This behavior will enable Users to better manage their order flow and prevent undesirable executions in Periodic Auctions, just as they do today for their Continuous Book orders.

Example 3: Incoming PAE Order Matching Against a PAO Order—MTP Action Occurs

Example 3 illustrates how MTP will operate when Firm A's resting PAO Order with a MTP modifier of MTP Cancel Smallest ("MCS"),²⁹ interacts

with Firm A's inbound PAE Order with an MCS modifier, and an auction is *not* in progress. Here, MTP operates in the same manner³⁰ as it would for Continuous Book Orders; *i.e.*, because Firm A has designated its orders with the MTP modifier, MCS, the System will cancel Firm A's Order 1, which is Firm A's small quantity order.³¹ This MTP action prevents Firm A from potentially trading with itself during a Periodic Auction.

- *Order 1—Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @1.00*
- *Order 2—Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @1.00*
- *Result: Order 1 is canceled.*

Example 4: Incoming PAE Order Matching Against a Continuous Book Order—MTP Action Occurs

Example 4 illustrates how MTP will operate when Firm A's incoming PAE Order with a MCS modifier, matches against Firm A's resting Continuous Book Order, and a Periodic Auction is *not* in progress. Here, MTP operates in the same manner³² as it would for Continuous Book Orders; *i.e.*, Firm's A's Order 1 is canceled³³ based on Firm A's Order 2 MCS modifier because Order 1 is smaller than Order 2. Because a PAE Order is eligible to receive an execution on the Continuous Book,³⁴ and both Order 1 and Order 2 are designated with MTP modifiers, the System correctly cancels Order 1, thereby preventing Firm A from potentially trading with itself on the Continuous Book.

- *Order 1—Resting (Firm A): Continuous Book order (MTP = Cancel Smallest), Buy 100 @1.00*
- *Order 2—Inbound order (Firm A): PAE Order (MTP = Cancel Smallest), Sell 200 @1.00*
- *Result: Order 1 is canceled.*

Example 5: Incoming PAE Order Matching Against a Continuous Book Order When a Periodic Auction Is in Progress—No MTP Action Occurs

For the sake of clarity, the Exchange wishes to describe what would happen to Order 1 if a Periodic Auction is in progress and an inbound Periodic

Auction Order arrives (*e.g.*, Order 4).³⁵ First, note that a Continuous Book Order cannot initiate a Periodic Auction.³⁶ Therefore, to initiate a Periodic Auction in this example, assume that two Periodic Auction Orders arrived, from Firm B and Firm C, prior to Order 1 and Order 4—*e.g.*, Order X (Firm B) and Order Y (Firm C). Further assume that Order X and Order Y are marketable versus each other and initiated a Periodic Auction. Additionally, assume that Order 1, a Continuous Book Order is entered prior to Order 4, and that Order 1 and Order 4 are designated with MTP modifiers originating from the same Unique Identifiers. Upon the arrival of Order 4, a Periodic Auction Order, the System will temporarily bypass³⁷ Order 1's and Order 4's MTP instruction, and Order 4 will join the Periodic Auction. Order 1 will remain on the Book. If Order 1 did not execute in the Continuous Book while the Periodic Auction was in progress, then Order 1 could potentially execute with Order 4, provided that Order 1 has priority as determined by Rule 11.25(f). The bypassing of the MTP modifiers in this scenario occurs only upon entry of Order 4 to prevent the cancellation of orders in situations where an immediate execution would not occur.

- *NBBO: 10.00 x 10.05*
- *Order X (Firm B): Buy 100 @10.03—Midpoint Peg PAO*
- *Order Y (Firm C): Sell 100 @10.02—Midpoint Peg PAO*
- *Auction is initiated between Order X and Order Y*
- *Order 1 (Firm A): Buy 100 @10.03—Midpoint Peg Continuous Book Order—MTP = Cancel Oldest*
- *Order 4 (Firm A): Sell 100 @10.02—Midpoint Peg PAE—MTP = Cancel Oldest*
- *MTP would be bypassed when Order 4 is entered and Order 4 would join the Periodic Auction in progress.*
- *Result: Order X and Order Y trade 100 @10.025 in Periodic Auction. Order 1 and Order 2 trade 100 @ 10.025 in Periodic Auction*

³⁵ This iteration of Example 4 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1)(A).

³⁶ See Rule 11.25(c), Initiation and Publication of Periodic Auction Information, "A Periodic Auction will be initiated in a security during Regular Trading Hours when one or more Periodic Auction Orders to buy become executable against one or more Periodic Auction Orders to sell pursuant to this Rule 11.25."

³⁷ The Exchange notes that the bypassing of the MTP modifiers in this scenario is *temporary*. Should the Periodic Auction complete and Order 1 does not have the opportunity to trade with Order 4 in the Periodic Auction, then Order 1 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

²⁶ *Supra* note 19.

²⁷ See Rule 11.9(f)(1).

²⁸ This iteration of Example 2 demonstrates the functionality described in proposed Rule 11.25(e)(1)(B).

²⁹ MTP Cancel Smallest ("MCS") is defined as "[a]n incoming order marked with the 'MCS' modifier will not execute against opposite side resting interest marked with any MTP modifier

originating from the same Unique Identifier. If both orders are equivalent in size, both orders will be cancelled back to the originating User(s). If the orders are not equivalent in size, the smaller of the two orders will be cancelled back to the originating User and the larger order will remain on the book. See Rule 11.9(f)(5).

³⁰ *Supra* note 19.

³¹ See Rule 11.9(f)(5).

³² *Supra* note 19.

³³ *Supra* note 31.

³⁴ *Supra* note 14.

Here, even though Order 1 and Order 4 both originated from Firm A, and are designated with an MTP modifier, Order 1 is not canceled upon Order 4's arrival because Order 1 is a Continuous Book Order that may or may not end up trading with Order 4 once the Periodic Auction is complete. Because Order 1 could receive an execution on the Continuous Book while the Periodic Auction is in progress, the Exchange temporarily bypasses Order 1's MTP instruction upon Order 4's arrival to prevent Order 1 from forfeiting a Continuous Book execution based on a *possibility* that Order 1 would be executable versus Order 4 at the completion of the Periodic Auction.

Example 6: Incoming Continuous Book Order Matching Against a PAO Order—No MTP Action Occurs

Example 6 illustrates how MTP will operate when Firm A's incoming Continuous Book Order with an MCS modifier matches with Firm A's resting PAO Order with an MCS modifier, and a Periodic Auction is *not* in progress. Here, MTP will not be applied because PAO Orders and Continuous Book Orders are not permitted to trade with one another.³⁸ As such, MTP is not needed to prevent Firm A's Order 1 from trading with Firm A's Order 2 and as such, Order 2 is permitted to post to the BYX Book.

- *Order 1—Resting (Firm A): PAO Order (MTP = Cancel Smallest), Buy 100 @1.00*
- *Order 2—Inbound order (Firm A): Continuous Book order (MTP = Cancel Smallest), Sell 200 @1.00*
- *Result: Order 2 will rest in the Continuous Book, and there is no MTP action.*

Example 7: Incoming Order Is Canceled Due to “Periodic Auction in Progress” Involving a PAO Order

Example 7 illustrates how an incoming order with a MTP modifier is canceled because a Periodic Auction is in progress.³⁹ Here, Firm A's inbound Order 2, a PAE Order to sell 200 @1.00, with a MTP modifier of MTP Cancel Both (“MCB”),⁴⁰ immediately starts an

auction with Firm B's Order 1, a resting PAO Order to Buy 100 @1.00, that is participating in the Periodic Auction. While the Periodic Auction is in progress, Firm A enters Order 3, a PAE Order to Buy 200 @1.00 with an MCB instruction.

The entry of Order 3 presents a scenario in which the Exchange seeks to implement MTP functionality that behaves differently than demonstrated in each of the preceding five examples. Specifically, if a Periodic Auction is in progress, and an inbound Periodic Auction is designated with an MTP modifier, and such order matches against a resting contra-side Periodic Auction Order, that is participating in the Periodic Auction, originating from the same Unique Identifier that is also designated with an MTP modifier, then the Periodic Auction Order will be cancelled. Importantly, this behavior is necessary to help ensure that once a Periodic Auction is initiated it will be completed.

Applying this proposed behavior to Example 7's fact pattern, when Firm A's Order 3, a PAE Order with an MCB modifier is entered after Periodic Auction has been initiated and Order 3 subsequently matches with Firm A's Order 2 (a PAE Order with a MCB modifier), Order 3 will be cancelled. Without this proposed behavior, Order 3 would otherwise be included in the Periodic Auction, and its MTP Cancel Both instruction would result in the cancellation of Order 2,⁴¹ preventing the Periodic Auction from completing, and denying Firm A an execution it would otherwise have expected to receive. The Exchange believes that this proposed behavior appropriately balances the dual goals of ensuring that Periodic Auctions complete once initiated and providing Members the ability to utilize MTP for their Periodic Auction Orders in each of the scenarios described in the preceding five examples.⁴²

- *Order 1—Resting (Firm B): PAO Order, Buy 100 @1.00*

- *Order 2—Inbound Order (Firm A): PAE Order (MTP = Cancel Both⁴³), Sell 200 @1.00*
- *Action: Order 2 initiates a Periodic Auction with Order 1*
- *Order 3—Inbound order (Firm A): PAE Order (MTP = Cancel Both), Buy 200 @1.00*
- *Result: Order 3 is canceled in order to prevent Order 3 participating in the Periodic Auction, canceling Order 2, and disrupting the completion of the Periodic Auction.*

Example 8: Incoming Order Has MTP Temporarily Bypassed in a Periodic Auction

Example 8 is another example of MTP being temporarily bypassed when a Periodic Auction is in progress, despite the Member adding MTP instructions to their Periodic Auction Order(s) and Continuous Book Order(s). Here, Firm B's Order 2, a PAE Order with an MCO modifier, initiates a Periodic Auction upon entry with Firm A's Order 1, a resting PAE Order with an MCO modifier. Firm A subsequently enters a Continuous Book Order (Hidden) with an MCO modifier. Here, the Exchange will temporarily bypass⁴⁴ an inbound Continuous Book Order's MTP modifier when a Periodic Auction is in progress, and such Continuous Book Order would post to the Continuous Book, and be eligible to participate in the Periodic Auction, or alternatively receive an execution from the Continuous Book. In such instance, applying the Continuous Book Order's MTP modifier and canceling such order based on the *potential* that the order could trade in the Periodic Auction, would be unnecessarily prohibitive. By posting to the Continuous Book, such order could still execute without violating its MTP instructions.

Based on the proposed MTP functionality, Order 3 will post to the BYX Book prior to the end of the Periodic Auction as the MTP modifier is temporarily bypassed.⁴⁵ Order 1 and

³⁸ *Supra* note 16 (“Periodic Auction Only Orders are not eligible for execution on the Continuous Book.”).

³⁹ Example 7 demonstrates the proposed functionality described in 11.25(e)(1)(B).(1)(B).

⁴⁰ MTP Cancel Both (“MCB”) is defined as “[a]n incoming order marketed with the “MCB” modifier will not execute against opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User(s). See Rule 11.9(f)(4). demonstrates the proposed functionality described in proposed Rule 11.25(e).

⁴¹ See Rule 11.9(f)(4).

⁴² The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

⁴³ MTP Cancel Both is defined as “[a]n incoming order marked with the “MCB” modifier will not execute against the opposite side resting interest marked with any MTP modifier originating from the same Unique Identifier. The entire size of both orders will be cancelled back to the originating User (s). See Rule 11.9(f)(4).

⁴⁴ The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

⁴⁵ The Exchange notes that the bypassing of the Continuous Book Order's MTP modifier in this scenario is *temporary*. Should the Periodic Auction complete and Order 3 does not have the

Order 2 will trade in the Periodic Auction for 500 shares @10.02. After trading with Order 2, Order 1 still has 500 shares remaining. Prior to the end of the Periodic Auction, Order 3 will be matched in the Periodic Auction and trade 200 shares with Order 1 @10.02, bypassing the MCO modifier assigned by Firm A to its Order 1 and Order 3.

The Exchange believes that temporarily bypassing an MTP modifier in this scenario is necessary to ensure that a Periodic Auction completes once it is initiated.⁴⁶ Additionally, bypassing Order 3's MTP instruction is also necessary to avoid disrupting trading in the Continuous Book, because Order 3 could perhaps post and trade while the Periodic Auction is in progress. The Exchange therefore believes cancelling Order 3 based on its *potential* to trade in the Periodic Auction would unnecessarily prevent a Member from potentially receiving a Continuous Book execution. While the proposed MTP functionality will explicitly and automatically temporarily bypass a Member's MTP modifier when the scenario described in Example 8 is present, the Exchange believes that such behavior appropriately balances the dual goals of ensuring that Periodic Auctions operate as designed (*i.e.*, once initiated they will complete, executing the maximum number of shares), and still provides Members the ability to utilize MTP for their Periodic Auction Orders in majority of instances described in each of the preceding six examples.⁴⁷

- *Order 1—Firm A: PAE Order (MTP = Cancel Oldest), Buy 1000 @10.02*
- *Order 2—Firm B: PAE Order (MTP = Cancel Oldest), Sell 500, @10.02*
- *Action: Order 2 initiates an auction with Order 1, because Firm A and Firm B are different entities.*
- *Order 3—Inbound order (Firm A): Continuous Book Order (MTP = Cancel Oldest), Sell 200 @10.02*

opportunity to trade with Order 1 in the Periodic Auction, then Order 3 would remain posted on the Continuous Book with its MTP modifier and be afforded the protections of MTP.

⁴⁶ Example 8 demonstrates the proposed functionality described in proposed Rule 11.25(e)(1)(C).

⁴⁷ The Exchange notes that the proposed MTP functionality is intended as a supplementary risk tool that Members may voluntarily use to help them manage their risk and compliance with applicable securities rules. As registered broker-dealers, Members are ultimately responsible for compliance with applicable securities rules, and should not rely on the proposed functionality as a sole means of compliance. As such, while the proposed MTP functionality will, in some instances, operate differently than it does outside of the context of Periodic Auctions, its design as a supplementary risk tool will still serve to benefit Members that choose to utilize this tool.

- *Action: MTP modifier on Order 3 is temporarily bypassed*
- *Result: Order 3 posts to the BYX Book prior to the end of the auction; Order 1 and Order 2 trade in the Periodic Auction for 500 @10.02; Order 3 then trades 200 @10.02 with Order 1 (bypassing MTP).*

Example 9: Minimum Quantity Order Unable To Be Filled (PAE vs. PAE)⁴⁸

Example 9 illustrates how the System will ignore the Minimum Quantity instruction on a Periodic Auction Order that is also designated with an MTP modifier, when the Minimum Quantity cannot be satisfied. Specifically, in the event a Periodic Auction Order is entered as a Minimum Quantity Order, as well as with an MTP modifier (*e.g.*, Order 1), and such Periodic Auction Order could initiate a Periodic Auction with a contra-side Periodic Auction Order or trade with a Continuous Book Order (*e.g.*, Order 2), designated with an MTP modifier from the same Unique Identifier as Order 1, the System will apply ignore Order 1's Minimum Quantity instruction, and apply MTP, regardless of whether the Minimum Quantity is satisfied. Here, upon entry of Order 2, the System will ignore Order 1's Minimum Quantity instruction, and instead apply MTP, resulting in the cancellation of Order 1.

- *Order 1 (Firm A): Buy 1000 @10.02—PAE—Min Quantity = 500 (MTP=any)*
- *Order 2 (Firm A): Sell 400 @10.02—PAE order (MTP=Cancel Oldest)*
- *Result: Order 2 cannot initiate an auction with Order 1 due to the MIN quantity on Order 1. 'MIN' on Order 1 is ignored and Order 2 cancels Order 1. Order 2 posts to the book.*

Example 10: Minimum Quantity Order Able To Be Filled (PAE vs. PAE)⁴⁹

Example 10 illustrates how the System will ignore the Minimum Quantity instruction on a Periodic Auction Order that is also designated with a an MTP modifier, when the Minimum Quantity is satisfied. Here, even though the Minimum Quantity for Order 1 can be satisfied by Order 2, the System will apply MTP resulting in the cancellation of Order 1.

- *Order 1 (Firm A): Buy 1000 @10.02—PAE—Min Quantity = 500 (MTP = any)*
 - *Order 2 (Firm 2): Sell 1000 @10.02—PAE (MTP = Cancel Oldest)*
- Result: The System applies MTP, and cancels Order 1*

⁴⁸ Example 9 demonstrates the proposed functionality described in 11.25(e)(2).

⁴⁹ Example 10 demonstrates the proposed functionality described in 11.25(e)(2).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁵² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposed MTP functionality is designed to promote the just and equitable principles of trade, and to protect investors and the public interest, by enabling Users to better prevent undesirable trading activity such as wash sales or self-trades for not only their Continuous Book Orders, but their Periodic Auction Orders as well. Additionally, by providing Users with a supplemental risk tool that will better enable them to achieve compliance with applicable securities rules and regulations, the proposed rule change will help to further ensure that orders eligible for execution in the Periodic Auction indeed represent genuine trading interest from separate and distinct firms. While the proposed MTP functionality would not operate identically to MTP as it is used in non-Periodic Auction scenarios, the Exchange believes that its proposal strikes an appropriate balance between ensuring Users receive executions in the Periodic Auction and providing Users' the ability to utilize MTP in most trading situations involving Periodic Auctions. By making this clear to Users,⁵³ they will be able to anticipate

⁵⁰ 15 U.S.C. 78f(b).

⁵¹ 15 U.S.C. 78f(b)(5).

⁵² *Id.*

⁵³ In addition to codifying the proposed functionality, the Exchange will send out a Member

how MTP modifiers will interact with their Periodic Auction Orders and mitigate any confusion that Users may have in using the proposed functionality.

Similarly, by making clear to Users that when they enter their Periodic Auction Orders as Minimum Quantity Orders, and designate them with an MTP instruction, and such Periodic Auction Orders attempt to execute versus contra-side Periodic Auction Orders or Continuous Book orders with a MTP modifier originating from the same Unique Identifier, that the Minimum Quantity instruction will not be enforced, Users will be better informed as to how MTP operates in conjunction with Minimum Quantity restrictions, and will be better able to manage their Periodic Auction Orders and when it may be sensible to enter Periodic Auction Orders with both a Minimum Quantity restriction and an MTP modifier.

Additionally, the Exchange believes that the proposed rule changes are designed to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Based on User feedback, the lack of MTP functionality for Periodic Auction Orders may discourage Users from entering Periodic Auction Orders because they do not have an automated way to systematically prevent undesirable executions resulting from orders originating from a User's algorithm or trading desk, or their related algorithms or trading desks. In this regard, the proposed rule changes may encourage Users to increase their Periodic Auction participation, thereby further enhancing the Periodic Auction liquidity pool and the ability of investors to execute larger orders that may otherwise be difficult to execute without market impact in the continuous market. Additionally, because Periodic Auctions are price-forming, the enhanced liquidity pools would indeed augment Periodic Auction's valuable price discovery function, which may be particularly helpful for investors when trading securities that typically trade with wider spreads.

Again, while the proposed MTP functionality may not apply a User's MTP modifiers in all instances, the Exchange as well as its Users believe that some level of MTP protection is more beneficial than completely foregoing MTP protection in its entirety. By making clear to Users how MTP for

Periodic Auction Orders will operate, Users can better manage their use of MTP modifiers, and anticipate how their Periodic Auction Orders will behave. Similarly, while Periodic Auction Orders entered as Minimum Quantity Orders, as well as an MTP Modifier, will in certain circumstances (discussed *supra*) cause the System to ignore a User's Minimum Quantity requirements and instead apply MTP, Users have indicated that they would prefer that MTP apply consistently so as to prevent undesirable wash sales.

Finally, the Exchange further believes that the proposed rule change does not unfairly discriminate amongst Users because the proposal will allow all Periodic Auction Users to utilize MTP just as all Users entering Continuous Book Orders may utilize MTP today. In this regard, the proposed amendment will avoid disparate treatment of Users. Furthermore, the bypassing or amending of MTP modifiers, as described in the Examples above, will apply equally to all Periodic Auction Users, regardless of their size.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Periodic Auction Users are free to decide whether to use MTP in their decision-making process when submitting Periodic Auction Orders to the Exchange.

Similarly, the Exchange does not believe that the proposed amendment poses a burden on intermarket competition that is not necessary or appropriate in furtherance of the Act. Indeed, the proposed rule change is designed to increase competition by offering Periodic Auction Users the ability to better manage their order flow and prevent undesirable executions. In turn, Users may be further incentivized to send additional orders to BYX's Periodic Auction mechanism, thereby fostering competition amongst exchanges, as well as with off-exchange venues (e.g., alternative trading systems) where Users that may otherwise utilized Periodic Auctions, typically seek to source block-sized liquidity.⁵⁴

⁵⁴ See "Trade Big with Cboe U.S. Periodic Auctions," available at: https://www.cboe.com/us/equities/trading/offerings/periodic_auctions/. ("Cboe created its patented Periodic Auctions to establish an on-exchange alternative to the growth of off-exchange liquidity. Most recently, the use of conditional order types on Alternative Trading Systems (ATSs) has reached new highs as a

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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBYX–2024–009 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁵⁵ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,⁵⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to perfect the operation of a free and open market and a national market system" and "protect investors and the public interest," and not be "designed to permit unfair discrimination between customers, issuers, brokers, or dealers,"⁵⁷ and Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."⁵⁸

percentage of ATS volumes. Periodic Auctions would offer a new price forming auction for investors seeking liquidity, including but not limited to block size transactions, during the course of the trading day. These intraday auctions may be a useful tool to attract buyers and sellers in less liquid or wider spread names, and would create an equal and fair market for market participants and investors that wish to either initiate or respond to such auctions. Periodic Auctions will be available on Cboe's BYX™ market center.").

⁵⁵ 15 U.S.C. 78s(b)(2)(B).

⁵⁶ *Id.*

⁵⁷ 15 U.S.C. 78f(b)(5).

⁵⁸ 15 U.S.C. 78f(b)(8).

notice that includes information about the proposed MTP functionality for Periodic Auctions.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5), 6(b)(8) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁵⁹

In particular, the Commission seeks comment on the following:

- Commenter's views on whether or not the Exchange has adequately described how the proposed functionality would handle incoming Periodic Auction Orders with MTP modifiers and incoming Continuous Book Orders with MTP modifiers before, during and after the conclusion of a Periodic Auction;
- Commenter's views on whether or not the Exchange has adequately described how the proposed incoming Periodic Auction Orders with MTP modifiers and incoming Continuous Book Orders with MTP modifiers would impact other Continuous Book Orders or Periodic Auction Orders;
- Commenter's views on whether or not it is appropriate for the proposed functionality to, in certain circumstances, allow for the execution of orders originating from the same Unique Identifier, even if those orders have MTP modifiers, and whether or not the Exchange has adequately explained and justified this proposed functionality; and
- Commenter's views on whether or not the proposed functionality adds unnecessary complexity to the Exchange.

Interested persons are invited to submit written data, views, and

arguments regarding whether the proposal should be approved or disapproved by October 16, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 30, 2024. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,⁶⁰ in addition to any other comments they may wish to submit about the proposed rule change.

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-CboeBYX-2024-009 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-CboeBYX-2024-009. 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-CboeBYX-2024-009 and should be submitted on or before October 16, 2024. Rebuttal comments should be submitted by October 30, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-21876 Filed 9-24-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20574 and #20575; SOUTH CAROLINA Disaster Number SC-20009]

Administrative Declaration of a Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of South Carolina dated 09/18/2024.

Incident: Tropical Storm Debby.

Incident Period: 08/04/2024 through 08/22/2024.

DATES: Issued on 09/18/2024.

Physical Loan Application Deadline Date: 11/18/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 06/18/2025.

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, 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: Berkeley, Orangeburg
Contiguous Counties:

South Carolina: Aiken, Bamberg, Barnwell, Calhoun, Charleston,

⁵⁹ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁶⁰ See *supra* note 4.

⁶¹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

Clarendon, Colleton, Dorchester,
Georgetown, Lexington,
Williamsburg

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.625
Homeowners without Credit Available Elsewhere	2.813
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 205748 and for economic injury is 205750.

The State which received an EIDL Declaration is South Carolina.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–21906 Filed 9–24–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12547]

Certification Related to Foreign Military Financing for Colombia Under Section 7045(c)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024

Pursuant to the authority vested in the Secretary of State, including under section 7045(c)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (Div. F, Pub. L. 118–47), I hereby certify that:

(i) the Special Jurisdiction for Peace and other judicial authorities, as appropriate, are sentencing perpetrators of gross violations of human rights, including those with command responsibility, to deprivation of liberty;

(ii) the Government of Colombia is making consistent progress in reducing threats and attacks against human rights defenders and other civil society activists, and judicial authorities are

prosecuting and punishing those responsible for ordering and carrying out such attacks;

(iii) the Government of Colombia is making consistent progress in protecting Afro-Colombian and Indigenous communities and is respecting their rights and territories;

(iv) senior military officers credibly alleged, or whose units are credibly alleged, to be responsible for ordering, committing, and covering up cases of false positives and other extrajudicial killings, or of committing other gross violations of human rights, or of conducting illegal communications intercepts or other illicit surveillance, are being held accountable, including removal from active duty if found guilty through criminal, administrative, or disciplinary proceedings; and

(v) the Colombian Armed Forces are cooperating fully with the requirements described in (I) through (IV) above.

This Certification shall be published in the **Federal Register** and shall be transmitted, along with the accompanying Memorandum of Justification, to Congress.

Dated: September 9, 2024.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2024–21952 Filed 9–24–24; 8:45 am]

BILLING CODE 4710–29–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 (Sub-No. 553X)]

Norfolk Southern Railway Company—Discontinuance of Trackage Rights Exemption—in Cuyahoga County, Ohio

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue trackage rights over approximately 1.3 miles of rail line owned by CSX Transportation, Inc. (CSXT), between milepost BJB 73.21 and milepost BJB 74.51 (the Line) on CSXT's Cleveland Subdivision.¹ The

¹ CSXT received authority to abandon the Line in 2023. See *CSX Transp., Inc.—Aban. Exemption—in Cuyahoga Cnty., Ohio*, AB 55 (Sub-No. 812X) (STB served Sept. 1, 2023). CSXT did not disclose the existence of NSR's trackage rights in that proceeding. On September 6, 2024, in that docket, CSXT filed a request for an extension of the consummation deadline. CSXT states that NSR's trackage rights constitute a barrier to CSXT's consummation of abandonment and requests that the Board extend the deadline to consummate until 60 days after NSR's discontinuance authority in this docket is granted. CSXT's request for an extension will be addressed in a separate decision in Docket No. AB 55 (Sub-No. 812X).

In light of that pending request, however, NSR is directed to notify CSXT when NSR has

Line traverses U.S. Postal Service Zip Codes 44113 and 44115.

NSR has certified that: (1) no local traffic has moved over the Line for at least two years; (2) any common carrier overhead traffic can be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a State or local government entity acting on behalf of such user) regarding cessation of service on the Line is either pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA)² to subsidize continued rail service has been received, this exemption will be effective on October 25, 2024, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)³ must be filed by October 4, 2024.⁴ Petitions to reopen must be filed by October 15, 2024.

consummated its authority to discontinue service over the Line. See *BNSF Ry.—Aban. Exemption—in Flathead Cnty., Mont.*, AB 6 (Sub-No. 495X), slip op. at 2 n.2 (STB served Aug. 14, 2017).

² Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. See 49 CFR 1152.27(c)(2)(i).

³ The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

⁴ Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. As noted, *supra* note 1, CSXT received authority to abandon the Line in *CSX Transportation, Inc.—Abandonment Exemption—in Cuyahoga County, Ohio*, AB 55 (Sub-No. 812X) (STB served Sept. 1, 2023). In its environmental review in that proceeding, the Board's Office of Environmental Analysis found that the abandonment would not significantly affect the quality of the human environment and recommended no environmental conditions. As a result, none were imposed. *CSX Transp., Inc.—Aban. Exemption—in Cuyahoga Cnty., Ohio*, AB 55 (Sub-No. 812X) (STB served Sept. 28, 2023). Because the Line has already been

All pleadings, referring to Docket No. AB 290 (Sub-No. 553X), must be filed with the Board 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 NSR's representative, William A. Mullins, Mullins Law Group PLLC, 2001 L Street NW, Suite 720, Washington, DC 20036.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at www.stb.gov.

Decided: September 20, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Zantori Dickerson,
Clearance Clerk.

[FR Doc. 2024-21940 Filed 9-24-24; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36804]

Vermilion Valley Railroad Company, LLC—Operation Exemption—FNG Logistics Company

Vermilion Valley Railroad Company, LLC (VVR), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to operate a rail line owned by FNG Logistics Company (FNG). The line extends approximately 5.91 miles between the Indiana/Illinois state boundary line at milepost 5.18 in Vermillion County, Ind., and the track's terminus at milepost 11.09 at Olin (near Covington) in Warren County, Ind. (the Line). VVR states that it has operated the Line since 2003 pursuant to an agreement with FNG.

According to the verified notice, VVR and FNG have entered into a new agreement, which extends the term of the last agreement between VVR and FNG and amends certain economic terms of the parties' arrangement. Under the new agreement, VVR will continue to operate the Line to provide common carrier rail service to all shippers on the Line, and to interchange traffic moving to and from the Line with CSX Transportation, Inc.

VVR certifies that its annual projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed \$5 million. VVR also states that the operation

agreement does not involve any interchange commitments.

The earliest this transaction may be consummated is October 9, 2024, the effective date of the exemption.

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 October 2, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36804, 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 VVR's representative, Terence M. Hynes, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005.

According to VVR, 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 20, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Stefan Rice,
Clearance Clerk.

[FR Doc. 2024-22093 Filed 9-24-24; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering, and Development Advisory Committee; Notice of Public Meeting

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: The meeting will be held on October 16, 2024, from 9:30 a.m.–4:30 p.m. EST. Requests for accommodations for a disability must be received by October 2, 2024. Individuals requesting to speak during the meeting must submit a written copy of their remarks

to DOT by October 2, 2024. Requests to submit written materials to be reviewed during the meeting must be received no later than October 2, 2024.

ADDRESSES: The meeting will be held in a hybrid setting to permit virtual participation. Virtual attendance information will be provided upon registration. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. A detailed agenda will be available on the REDAC internet website at <http://www.faa.gov/go/redac> at least one week before the meeting, along with copies of the meeting minutes after the meeting.

FOR FURTHER INFORMATION CONTACT: Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at chinita.roundtree-coleman@faa.gov or (609) 485-7149 or (609) 569-3729. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The REDAC was created under the Federal Advisory Committee Act, in accordance with Public Law (Pub. L.) 100-591 (1988) and Public Law 101-508 (1990), to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Agenda

At the meeting, the agenda will cover the following topics:

- FAA R&D Strategies, Initiatives, and Planning
- Impacts of emerging technologies, new entrant vehicles, and dynamic operations within the National Airspace System

III. Public Participation

DOT is committed to providing equal access to this meeting for all participants. The meetings will be "open to the public" per 41 CFR 102-3.150(a) meeting notice requirements. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 45 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the

subject to environmental review during the abandonment proceeding, this discontinuance does not require environmental review.

time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are asked to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to REDAC members before the deadline listed in the **DATES** section. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC.

Chinita Roundtree-Coleman,
REDAC PM/Lead, Federal Aviation
Administration.

[FR Doc. 2024-21913 Filed 9-24-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2023-0266]

Commercial Driver's License: Oregon Department of Transportation; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant a five-year exemption to the Oregon Department of Transportation (Oregon) from the commercial driver's license (CDL) rules concerning acceptable proof of citizenship or lawful permanent residency for citizens of Freely Associated States (FAS) who reside in Oregon and wish to obtain a CDL or commercial learner's permit (CLP). The FAS are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The U.S. Department of Homeland Security (DHS) allows States to issue full-term REAL ID licenses and ID cards to citizens of the FAS. The exemption allows Oregon to accept from citizens of the FAS a valid, unexpired passport issued by a FAS and an Arrival/Departure Record, meaning an I-94 or I-94A form, as proof of lawful entry into the United States, and issue standard CLPs and CDLs, rather than non-domiciled CLPs and CDLs, to these individuals. FMCSA concludes that

granting the exemption, subject to the terms and conditions set forth below, is likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained absent the exemption.

DATES: The exemption is effective September 25, 2024 and expires September 25, 2029.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 366-4225; pearlie.robinson@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number "FMCSA-2023-0266" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click "Browse Comments."

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number "FMCSA-2023-0266" in the keyword box, click "Search," and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, 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.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analyses, and provide an opportunity for public comment.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)).

The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation(s) Requirements

Under 49 CFR 383.71(a) and (b), a State Driver Licensing Agency (SDLA) may issue a CDL or CLP only to an applicant who presents proof of United States citizenship or lawful permanent residency, as listed in Table 1 to § 383.71, List of Acceptable Proofs of Citizenship or Lawful Permanent Residency. If the applicant cannot present this proof, then the SDLA may issue the applicant a non-domiciled CDL or CLP instead, under 49 CFR 383.71(f). Thus, under 49 CFR 383.71, a citizen of a FAS, who is not a lawful permanent resident, is not eligible for a CDL or CLP and may be issued only non-domiciled credentials.

The relationships of the United States with the FAS are governed by agreements known as Compacts of Free Association. Under these agreements, citizens of the FAS may enter the United States as nonimmigrants, and, without obtaining a visa, they may remain in and work in the country indefinitely.¹

Under the "REAL ID Act of 2005"² and its accompanying regulation promulgated by the Department of Homeland Security (DHS) at 6 CFR part 37,³ REAL ID compliant States are permitted to issue REAL ID compliant driver's licenses and identification cards to certain individuals with nonimmigrant status. However, under 6 CFR 37.21(b)(1), if the individual has no end date to their authorized stay in the country, then the license or ID that is issued may be valid for a maximum of one year. Under this law, as originally enacted, because citizens of the FAS may remain in the country indefinitely these individuals could be issued REAL ID driver's licenses and ID cards lasting only one year.⁴

Subsequently, however, Congress enacted a modifying statute entitled the "REAL ID Act Modification for Freely

¹ See H. Rept. 115-945.

² Public Law 109-13, Div. B., 119 Stat. 302, May 11, 2005.

³ See 73 FR 5272 (January 29, 2008).

⁴ See 84 FR 46423 (September 4, 2019).

Associated States Act,”⁵ and DHS issued a corresponding amendment to its regulation. These changes permitted REAL ID compliant States to issue full-term REAL ID licenses and ID cards to citizens of the FAS. When issuing this regulatory amendment, DHS also modified the identification documents that citizens of the FAS may present when applying for a REAL ID driver’s license or ID card from a compliant State.⁶ Under its authority in 6 CFR 37.11(c)(1)(x), DHS permits complying States to accept “a valid unexpired passport issued by the Republic of the Marshall Islands, the Republic of Palau, or the Federated States of Micronesia with an approved Form I–94 . . . documenting the applicant’s most recent admission to the United States under the Compact of Free Association between the United States and the nation that issued the passport.” DHS believes its allowance of these documents is “consistent with the intent of Congress.”⁷

Applicant’s Request

Oregon’s application for exemption was described in detail in a **Federal Register** notice on June 11, 2024, (89 FR 49265) and will not be repeated here as the facts have not changed.

IV. Public Comments

In response to the notice of Oregon’s application, there were five comments submitted to the docket. Four individuals commented in opposition to the exemption, and the Hawaii Department of Transportation (HDOT) commented in support of the exemption.

Curt Smith, an individual opposing the exemption, said: “The exemption take[s] away from US citizens who want a CDL. [I]f the applicants are not US citizens, they should not get the same CDL as the driver that is a US citizen. A Nondomiciled CDL is just fine for someone that is not permanently domiciled in the continental United States.” The other comments in opposition expressed similar views.

HDOT submitted comments in support of the exemption and wrote, “HDOT agrees with Oregon and suggests that a valid, unexpired passport issued to a citizen of FAS, accompanied by an I–94 . . . form, is sufficient to prove that an individual has entered the United States lawfully.”

V. FMCSA Safety Analysis and Decision

FMCSA has evaluated Oregon’s application for exemption and the public comments and based on its analysis, decided to grant an exemption to Oregon from 49 CFR 383.71 for citizens of the FAS. The Agency believes that granting an exemption allowing Oregon to issue CDLs or CLPs to citizens of the FAS in accordance with all other State procedures in 49 CFR 383.73(a) and (b) will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption (49 CFR 381.305(a)). The exemption allows Oregon to accept a valid, unexpired passport issued by a FAS and an Arrival/Departure Record, meaning an I–94 or I–94A form, to prove that the individual has entered the United States lawfully, and issue standard CLPs and CDLs to these individuals.

In making this determination, FMCSA notes that DHS allows States to issue full-term REAL ID licenses and ID cards to citizens of FAS. DHS provides requirements for citizens of FAS to present proof of lawful permanent residency such that these individuals may receive REAL ID credentials, and the exemption pertains only to proof of lawful permanent residency.

VI. Exemption Decision

A. Applicability of Exemption

FMCSA grants an exemption from the CDL “List of Acceptable Proofs of Citizenship or Lawful Permanent Residency” requirements in Table 1 to 49 CFR 383.71 for citizens of the FAS residing in Oregon for a period of five years subject to the terms and conditions of this decision. Oregon may issue CLPs and CDLs under this exemption in accordance with State procedures in 49 CFR 383.73(a) and (b) only to a citizen of a FAS who presents a valid, unexpired passport issued by a FAS and an Arrival/Departure Record, meaning an I–94 or I–94A form, to prove that the individual has entered the United States lawfully.

B. Terms and Conditions

Oregon must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350–399).

C. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts

with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

D. Notification to FMCSA

Oregon must provide to FMCSA, upon request, a list of all drivers issued CLPs or CDLs under this exemption.

E. Termination

FMCSA does not believe that Oregon will experience any deterioration of its safety record. The Agency will, however, rescind the exemption if: (1) Oregon fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objective of 49 U.S.C. 31136(e) and 31315(b).

Vincent G. White,
Deputy Administrator.

[FR Doc. 2024–21926 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2024–0010]

Agency Information Collection Activity Under OMB Review: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve a request for an extension without change to an existing information collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

DATES: Comments must be submitted before November 25, 2024.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website:* <https://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site. All electronic submissions must be made to the U.S. Government electronic docket site at <https://www.regulations.gov>. Commenters

⁵ Public Law 115–323, 132 Stat. 4443, Dec. 17, 2018.

⁶ See 84 FR 46556 (September 4, 2019).

⁷ Id.

should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit <https://www.regulations.gov>.

Docket: For access to the docket to read background documents and comments received, go to <https://www.regulations.gov> at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Erika Mazza at 202–366–7418 or erika.mazza@dot.gov.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) the necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 2132–0572.

Background

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Federal Transit Administration and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is used only internally for general service improvement and program management

purposes and is not intended for release outside of the agency;

- Information gathered is not used for the purpose of substantially informing influential policy decisions; and
- Information gathered yields qualitative information; the collections are not designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Current Action: Extension of a currently approved collection.

Respondents: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Total Annual Respondents: 10,000.

Estimated Annual Burden on Respondents: 7,582 hours.

Frequency: Once per request.

Kusum Dhyani,

Director, Office of Management Planning.

[FR Doc. 2024–21956 Filed 9–24–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****[Docket No. FTA–2023–0032]****RIN 2132–ZA10****General Directive 24–1: Required Actions Regarding Assaults on Transit Workers****AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).**ACTION:** General directive.

SUMMARY: The Federal Transit Administration (FTA) is issuing a General Directive to address the significant and continuing national-level safety risk related to assaults on transit workers. The General Directive requires each transit agency subject to FTA's Public Transportation Agency Safety Plans (PTASP) Final Rule to conduct a safety risk assessment, identify safety risk mitigations or strategies, and provide information to FTA on how it is assessing, mitigating, and monitoring the safety risk associated with assaults on transit workers. Each transit agency serving a large urbanized area must involve the joint labor-management Safety Committee when identifying safety risk mitigations.

DATES: Responses to this General Directive are due December 26, 2024.

ADDRESSES: FTA's Office of Transit Safety and Oversight (TSO) will host a webinar to discuss the requirements of General Directive 24–1. Visit <https://www.transit.dot.gov/assaults> for more information and to RSVP. FTA is committed to providing equal access for all webinar participants. If you need alternative formats, options, or services, contact FTA-Knowledge@dot.gov at least three business days prior to the event. If you have any questions, please email FTA-Knowledge@dot.gov.

FOR FURTHER INFORMATION CONTACT: For program matters, contact Stewart Mader, Office of Transit Safety and Oversight, (202) 366–9677 or stewart.mader@dot.gov. For legal matters, contact Heather Ueyama, Office of Chief Counsel, (202) 366–7374 or heather.ueyama@dot.gov. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**I. Executive Summary****II. Summary of General Directive and Changes From Proposed General Directive****III. Notice of Proposed General Directive and Response to Comments****A. General**

1. Support
2. Opposition
- B. National Level Hazard/FTA's Safety Risk Assessment Process
- C. Assault as an Issue Not Exclusive to Public Transportation
- D. Compliance Timeframe
- E. Burden
- F. Funding and Technical Assistance
- G. Applicability
- H. Definition of Assault on a Transit Worker
- I. Safety Risk Mitigations
- J. Role of the Safety Committee
1. Role of the Safety Committee in Safety Risk Assessment
2. Role of the Safety Committee in Safety Risk Mitigations
3. Role of the Safety Committee in Monitoring Mitigation Effectiveness
4. Role of the Safety Committee in Required Reporting
5. Other Comments Pertaining to Safety Committee
- K. Required Actions
1. Conduct a Safety Risk Assessment
2. Identify Safety Risk Mitigations
3. Submit Required Information to FTA
- L. Follow-Up Reporting
- M. Sensitive Security Information (SSI) and Freedom of Information Act (FOIA)
- N. Oversight and Enforcement
1. Federal Enforcement
2. State Safety Oversight Agency Role

I. Executive Summary

FTA is issuing a General Directive to address the significant and continuing safety risk associated with assaults on transit workers.¹ FTA has identified a national-level hazard that transit workers must interact with the public and, at times, must clarify or enforce agency policies, which can present a risk of transit workers being assaulted on transit vehicles and in revenue facilities. FTA has determined that the national-level hazard and potential consequences discussed above constitute an unsafe condition or practice presenting a risk of death or personal injury for transit workers. Accordingly, pursuant to 49 CFR 670.25, FTA is issuing a General Directive that directs transit agencies to take action to address the identified national-level hazard and the potential consequences of the hazard.

This General Directive is part of FTA's ongoing comprehensive efforts to improve transit worker safety. FTA is also undertaking other actions related to transit worker safety, including funding research, sponsoring training, soliciting public input, and providing technical assistance. FTA intends to use information submitted to it pursuant to

the General Directive and other FTA initiatives to inform future FTA actions, including rulemakings such as the planned Transit Worker and Public Safety rule (RIN 2132–AB47).

II. Summary of General Directive and Changes From Proposed General Directive

This General Directive requires each transit agency that is subject to the Public Transportation Agency Safety Plans (PTASP) Final Rule (49 CFR part 673) to use the Safety Management System (SMS) processes documented in its Agency Safety Plan (ASP) to conduct a safety risk assessment related to assaults on transit workers on the public transportation system it operates. If a transit agency has conducted a safety risk assessment related to assaults on transit workers in the twelve months preceding the date of issuance of this General Directive, and if the transit agency continues to believe that the results of that safety risk assessment are relevant, the transit agency need not conduct a new assessment. This General Directive also requires each transit agency to use the SMS processes documented in its ASP to identify safety risk mitigations or strategies necessary as a result of the agency's safety risk assessment. As required by 49 U.S.C. 5329(d)(5) and the PTASP Final Rule at 49 CFR 673.25(d)(1), each transit agency serving a large urbanized area must involve the joint labor-management Safety Committee when identifying safety risk mitigations to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment.

This General Directive also requires each transit agency to provide information to FTA on how it is assessing, mitigating, and monitoring the safety risk associated with assaults on transit workers within 90 days of issuance of this General Directive.

FTA has chosen this approach as part of the effort to address assaults on transit workers, as it is grounded in SMS principles and methods, which FTA has adopted as the basis for enhancing public transportation safety. See 49 CFR 670.3. Further, this approach will ensure that each transit agency is taking a formal evaluation of the safety risk related to assaults on transit workers on their system. FTA believes this approach will contribute to transit agencies and their joint labor-management Safety Committees identifying scalable and effective mitigations across the range of services they provide and situations that contribute to the risk of assaults on transit workers.

¹ Please refer to the Public Transportation Agency Safety Plans (PTASP) Final Rule for definitions of "assault on a transit worker" and "transit worker": <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-673>.

FTA is finalizing the General Directive largely as proposed. However, in the Notice of Proposed General Directive published on December 20, 2023 (88 FR 88213), FTA proposed a 60-day timeframe for transit agencies to comply with this General Directive. In response to public comments, FTA has increased the compliance timeframe to 90 days in this General Directive. In response to public comments, FTA also has removed the term “written plan” from the Enforcement section of the General Directive. Additional information about these changes is provided in Section III below.

FTA notes that this directive is intended to work in conjunction with Occupational Safety and Health Administration (OSHA) protections and is not intended to preempt OSHA’s standards or other enforcement authority.

The General Directive contains binding obligations, which 49 U.S.C. 5334(k) defines as “a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.” Under 49 U.S.C. 5334(k) FTA is authorized to issue binding obligations if it follows notice and comment rulemaking procedures under 5 U.S.C. 553.

III. Notice of Proposed General Directive and Response to Comments

FTA published a Notice of Proposed General Directive in the **Federal Register** on December 20, 2023, which is available on the FTA website at <https://www.transit.dot.gov/regulations-and-guidance/safety/fta-general-directives> and in Docket No. FTA–2023–0032. The public comment period closed on February 20, 2024.

FTA received 66 comment submissions to the docket. Commenters included transit agencies, labor unions, State Safety Oversight Agencies (SSOAs), and individuals. FTA has considered these comments and addresses them in the corresponding sections below. Some comments were outside the scope of this General Directive, and therefore, FTA does not respond to those comments.

FTA reviewed all relevant comments and took them into consideration when developing the General Directive. Below, the comments and responses are subdivided by their corresponding sections of the General Directive and subject matter.

A. General

1. Support

Comments: Several commenters expressed general support for the General Directive, including transit agencies, labor unions, individuals, an industry association, and an SSOA. In general, these commenters emphasized the importance of efforts to address assaults on transit workers and voiced appreciation that FTA is taking action to address this issue.

Several commenters noted that assaults negatively impact the safety of workers and other individuals interacting with the transit system. Some provided anecdotal examples of assaults, while others noted factors that contribute to the problem.

One individual and two labor organizations stated that the General Directive is a step in the right direction but that additional FTA action is needed to address the issue.

FTA response: FTA appreciates the comments that expressed support for the General Directive. FTA acknowledges the efforts taken to date by the transit industry to address assaults on transit workers and looks forward to receiving submissions in response to the General Directive.

FTA acknowledges the comments that noted examples of assaults that negatively impact the safety of transit workers and comments that argued for additional action to address the issue. FTA notes that the General Directive requires each applicable transit agency to provide FTA information on how the transit agency is assessing, mitigating, and monitoring the safety risk associated with assaults on transit workers, which FTA intends to use to inform future Federal action to protect transit workers, including rulemakings such as the planned Transit Worker and Public Safety rule.

2. Opposition

Comments: Some comments opposed FTA’s proposal generally. One individual argued that the General Directive does not offer concrete ideas for how transit agencies should combat assault. Another individual expressed that while FTA’s recognition of assaults on transit workers is overdue, the General Directive is burdensome and would do little to improve safety for transit workers.

One individual specifically addressed a statement in FTA’s **Federal Register** notice, which articulated FTA’s concern that transit agencies may not have completed safety risk assessments despite the presence of the assault risk on their systems. This commenter

questioned FTA’s statement, arguing that the likelihood of assault is remote for many transit agencies and that it is reasonable to conclude that some agencies did not identify it as an unacceptable risk in need of further mitigation. This commenter further questioned why FTA believes further action is necessary, stating that FTA appeared to be changing its position that assault is best addressed through the scalable PTASP process. This commenter argued that FTA should use the National Public Transportation Safety Plan (National Safety Plan) as FTA’s formal mechanism for communicating hazard information and directing transit agency action, as opposed to issuing directives.

FTA response: FTA acknowledges the commenters that expressed opposition to the General Directive and notes that the General Directive is intended to ensure transit agencies assess and mitigate the risk associated with assaults on transit workers and to help FTA better understand the use of SMS processes to address this risk. FTA has limited the reporting required by the General Directive to that which is necessary to support FTA’s understanding, in order to minimize the burden associated with responding to the General Directive.

As stated in the Notice of Proposed General Directive, FTA is concerned that transit agencies may not have completed a safety risk assessment despite the presence of the risk of assaults on the systems they operate. FTA has reason to believe this is the case based on an analysis of Special Directives on transit worker assault that FTA issued to nine transit agencies on October 4, 2022. Only four of these agencies reported completion of a safety risk assessment prior to issuance of the Special Directives. FTA understands the commenter’s argument that a transit agency may have completed a safety risk assessment and determined that mitigation is not necessary. If that is the case, and the safety risk assessment was completed within 12 months prior to the issuance of this General Directive, the transit agency need not complete another safety risk assessment to comply with this General Directive.

FTA acknowledges the commenter who states that FTA appeared to be changing its position that assault is best addressed through the scalable PTASP process, and notes that the General Directive reinforces PTASP processes by ensuring that agencies are carrying them out to mitigate the risk associated with assaults on transit workers.

FTA acknowledges the commenter that suggested FTA should use the

National Safety Plan to direct transit agency action to address assaults on transit workers instead issuing a General Directive. FTA notes that the recently updated National Safety Plan serves as FTA's primary guidance document to improve transit safety performance. The National Safety Plan identifies safety performance measures to support PTASP safety performance target setting, which includes measures related to assaults on transit workers. FTA does not believe that the National Safety Plan is the appropriate mechanism to require the actions outlined in this General Directive.

FTA notes that per 49 U.S.C. 5329(f), Congress has provided FTA with authority to issue directives with respect to the safety of a recipient's transit system or the public transportation industry generally. In 49 CFR 670.25(a), FTA has defined the situations in which FTA may issue General Directives. These include when the FTA Administrator "determines that an unsafe condition or practice, or a combination of unsafe conditions and practices, exists such that there is a risk of death or personal injury, or damage to property or equipment." As explained in FTA's proposal and in this General Directive, FTA has determined that the national-level hazard and potential consequences relating to assaults on transit workers constitute an unsafe condition or practice presenting a risk of death or personal injury for transit workers. FTA therefore believes that a General Directive is an appropriate further step to address assaults on transit workers. This General Directive is intended to ensure that all transit agencies subject to the PTASP Final Rule will complete a safety risk assessment and mitigate the risk of assaults based on FTA's identification of a national-level hazard regarding assaults on transit workers.

B. National Level Hazard/FTA's Safety Risk Assessment Process

Comments: Two commenters provided feedback on FTA's identification of a national-level hazard regarding assaults on transit workers. One individual expressly disagreed that this is a national-level hazard, arguing that being in a customer-facing position is not itself a hazard. This individual argued that FTA's identified hazard is not consistent with FTA's definition of "hazard" at 49 CFR 673.5. The commenter requested that FTA work with the transit industry to define the hazard in a way that is more accurate, actionable, and consistent with FTA guidance and training. Further, the commenter requested additional

information on likelihood determinations made during FTA's safety risk assessment on this topic, specifically how FTA concluded that 185 major assault events from 2008–2019 is a "very high" likelihood.

A transit agency commenter agreed that there is a national-level hazard but stated that transit agencies need a better understanding of how to deploy the Safety Risk Management (SRM) process and implement successful mitigation measures.

FTA response: FTA acknowledges the commenter that disagreed with FTA's identification of a national-level hazard related to assaults on transit workers and that argued the hazard identified by FTA for this concern is not consistent with FTA's definition of hazard in 49 CFR part 673. FTA disagrees with the commenter's assertion and notes that the fact that transit workers must interact with the public and, at times, must clarify or enforce policies is a "real or potential condition that can cause injury, illness, or death." As such, it is not in conflict with FTA's definition of hazard at 49 CFR 673.5, and FTA does not believe additional revision is necessary.

Regarding the likelihood determinations made during FTA's safety risk assessment on this topic, as explained in FTA's proposal, to assess the likelihood of assaults on transit workers on vehicles, FTA reviewed 2,225 National Transit Database (NTD) major event reports matching the potential consequence and found an average of 185 events per year. Due to the frequency of events happening on average every other day, FTA determined a likelihood rating of Very High (5). Similarly, to assess likelihood of assaults on workers in facilities, FTA reviewed 674 NTD major event reports from 2008 through 2020 that involved assaults on transit workers in revenue facilities throughout the country and found an average of 56.17 events per year. Due to the rate of occurrence, FTA determined a likelihood rating of Very High (5).

FTA acknowledges the commenter who agreed that there is a national-level hazard and stated that transit agencies need a better understanding of how to deploy the SRM process and implement successful mitigation measures. FTA notes that it provides comprehensive technical assistance to help the transit industry meet PTASP requirements and implement SMS processes. FTA's PTASP Technical Assistance Center (TAC) provides one-on-one technical assistance, conducts voluntary ASP technical reviews, maintains a technical assistance resource library, and

facilitates peer-sharing via an ASP Directory. More information is available at <https://www.transit.dot.gov/PTASP-TAC>.

C. Assault as an Issue Not Exclusive to Public Transportation

Comments: Several commenters noted that assault is a broad societal issue that is not exclusive to public transportation, with some noting that the General Directive does not acknowledge the many societal factors contributing to assaults.

One industry association argued that assaults should be viewed through a broader community-based lens, as opposed to a sole focus on public transportation. A transit agency suggested that FTA should form collaborative partnerships with other stakeholders, such as state agencies, local law enforcement agencies, and community members, to address assaults on transit workers. Another individual requested that the General Directive acknowledge the importance of coordinating with other stakeholders to combat crime generally.

Four commenters expressed concern with using SRM processes to address assaults on transit workers. An industry association argued that assaults on transit workers are random acts and that this unpredictability makes it nearly impossible to use assault data as part of an agency's SRM processes. One individual argued that a transit agency risk assessment will not solve the problem and urged FTA to focus on actions that FTA can control.

A separate individual commenter argued that FTA should address transit security as a separate area of focus from safety and clarify the distinction between these two areas. This commenter argued that risks related to assaults cannot be regulated through a safety lens or safety risk assessment, but instead should be addressed through a transit security and enforcement lens. The commenter argued that the General Directive should require the implementation of solutions that deliver change instead of measuring events in the context of a safety target. In addition, the commenter argued that Federal action on this topic is better addressed by Transportation Security Officials from the Department of Homeland Security (DHS). It recommended that FTA engage with DHS regarding the General Directive. Similarly, an SSOA asked what collaboration FTA has undertaken with security-focused agencies such as the Transportation Safety Administration (TSA) when developing its strategy for addressing assaults on transit workers.

This commenter stated that the focus of the General Directive should be sharing information and research relating to mitigation strategies, and providing assistance to agencies that are struggling to effectively mitigate assaults.

FTA response: FTA agrees with the commenters who argued that assault is a broader issue not exclusive to public transportation. FTA recognizes that social, economic, health-related, and other factors external to transit are contributing factors to assaults on transit workers, and that transit agencies alone cannot eliminate the hazards associated with these contributing factors. However, FTA notes that the PTASP Final Rule requires transit agencies to implement mitigations when a safety risk assessment determines that safety risk is at an unacceptable level. FTA also notes that mitigations can include collaboration with community partners who can help address factors external to transit that contribute to assaults on transit workers.

FTA acknowledges the commenters who argued against using SRM processes to address assaults on transit workers. FTA notes that the use of SRM to address assault risk is not new. FTA originally clarified that the transit industry should use the SRM processes required by 49 CFR part 673 to address the safety risk associated with assaults on transit workers through a **Federal Register** Notice published on May 24, 2019, titled “Protecting Public Transportation Operators from the Risk of Assault” (84 FR 24196). Since that time, FTA has reiterated the requirement for agencies to utilize existing SRM and Safety Assurance (SA) processes to address risk related to assaults on transit workers. Notably, the updated 49 CFR part 673, published on April 11, 2024, includes SRM- and SA-related requirements that pertain to assaults on transit workers. Further, the National Safety Plan published on April 10, 2024 (89 FR 25316) establishes safety performance criteria for all public transportation providers that includes safety performance measures related to assaults on transit workers. In addition, the National Safety Plan identifies safety performance measures related to assaults on transit workers for the safety risk reduction programs of transit agencies serving urbanized areas with a population of 200,000 or more.

FTA notes that the perceived randomness or unpredictability of certain concerns, such as assault, does not preclude safety risk assessments from being effective. To the contrary, FTA believes that the safety risk assessment process and subsequent SA activities allow transit agencies to

address risk, even when it appears random or unpredictable, that a transit agency may not have the ability to eliminate by identifying mitigations or strategies that can lower the likelihood of a negative consequence or reduce the severity of such a consequence when it occurs.

FTA disagrees with the commenter who argued that it is inappropriate to conduct a safety risk assessment for a concern that is outside of the jurisdiction or sphere of control of a single transit agency. The SRM process may be applied effectively to safety concerns and hazards that may not have originated within the transit agency. The goal of SRM and SA is not to eliminate a hazard but to reduce the likelihood and severity of potential consequences to an acceptable level. SRM effectively addresses safety concerns, including those that involve forces outside of the transit agency’s control, by working to reduce how often a potential consequence may occur, and to reduce the severity of the consequence if it does occur. For example, to mitigate assaults on transit workers, transit agencies may identify, implement, and monitor the effectiveness of mitigations, including, but not limited to, changes to policies and procedures, de-escalation training, crisis intervention and social outreach, increased surveillance, or modifications to operator compartments.

As noted in the response to comments on the PTASP Final Rule, FTA appreciates that some transit agencies treat assault on a transit worker as both a safety and a security event. Congress directed FTA to address assaults on transit workers through both the NTD and FTA’s safety program as part of FTA’s work to improve safety at transit systems across the country. The PTASP Final Rule carries out the Congressional mandate to address assaults on transit workers through PTASP, and the General Directive reinforces and leverages the requirements of the PTASP Final Rule.

In response to the commenter that recommended that the General Directive should require the implementation of solutions instead of measuring events in the context of a safety performance target, FTA notes that the General Directive does not prescribe mitigations for transit agencies, and instead relies on the transit agency’s established SRM processes to understand the assault on transit worker risk and to identify appropriate safety risk mitigations. Further, FTA notes that the General Directive does not establish any new requirement for safety performance target setting. Through this General

Directive, FTA will collect information on how the transit agency is monitoring or plans to monitor the effectiveness of any mitigation identified to address the risk of assaults on transit workers.

FTA also acknowledges the commenters that suggested this topic is better addressed by Transportation Security Officials from DHS, and that FTA should collaborate with DHS/TSA. FTA appreciates the commenter’s suggestion but notes that Congress directed FTA to address assaults on transit workers through FTA’s safety program as part of FTA’s work to improve safety at transit systems across the country.

D. Compliance Timeframe

Comments: FTA received comments from several commenters, including transit agencies, a state safety oversight agency, labor unions, and individuals, regarding the General Directive’s proposed 60-day compliance timeframe. One transit agency that previously received a Special Directive on Transit Worker Assault stated that it was prepared to submit the required information to FTA within the proposed timeframe. One labor union urged that the General Directive go into effect by July 2024, noting that most agencies’ ASP review and update processes will be completed by December 2024. The commenter argued that mitigations therefore should be identified no later than September. Two labor organizations urged FTA to obtain information collected through the General Directive without delay so that it can inform FTA’s rulemaking on Transit Worker and Public Safety.

In contrast, several commenters asked FTA to allow additional time for agencies to carry out the required activities and submit responses. Some commenters expressed that 60 days is insufficient time to comply but did not suggest an alternative timeframe. Commenters stated that the timeframe is unrealistic for agencies that must involve their Safety Committee, with one noting that Safety Committee meetings may not align with the proposed 60-day timeframe. This commenter also noted that agencies need more time to coordinate with other stakeholders, such as police departments and city officials. One transit agency stated that its Safety Committee will only have two meetings during the 60-day reporting window, and that compliance with the General Directive could delay other Safety Committee business and result in required overtime for Safety Committee members. This commenter also argued that the Safety Committee process is not

fully matured at many transit agencies. One transit agency commenter noted a potential overlap in the General Directive and a State law in California and asked FTA to consider potential conflicts with local legislation and extend the 60-day timeframe.

Three commenters recommended extending the compliance timeframe from 60 days to 120 days. One transit agency recommended a timeframe in the range of 90 to 120 days. These commenters argued that more time would allow agencies to conduct a thorough data-driven analysis, avoid overburdening agency resources, and allow for coordination with Safety Committees.

Two transit agencies recommended extending the compliance timeframe to six months. One of these agencies stated that this additional time is needed to properly evaluate the effectiveness of mitigations. The other agency argued that more time is needed to involve the Safety Committee effectively and ensure all required activities are conducted adequately.

One transit agency recommended a timeframe of at least one year, noting that transit agencies face unique challenges based on their resourcing and operation type.

One transit agency recommended a phased submission timeframe of up to five years, citing the need for a grace period to secure funding, train staff, and implement technology. This commenter further noted that regional transit agencies face challenges during off-cycle budget and planning periods.

FTA response: FTA acknowledges the commenters that provided a rationale for extending the 60-day compliance deadline in the proposed General Directive and has reviewed each comment submitted on this topic. Further, FTA acknowledges the urgency of the assault on transit workers concern as articulated by the labor union commenters. To balance the challenges that commenters raised with the need to maintain a schedule for identifying mitigations that recognizes the urgency of the assault on transit workers safety concern, FTA is adjusting the compliance timeframe to 90 days in this General Directive. The 90-day timeframe provides additional flexibility to agencies to coordinate with Safety Committees, supports annual ASP review and update processes in 2024, and enables the information collected to inform FTA's Transit Worker and Public Safety rulemaking.

E. Burden

Comments: FTA received comments from transit agencies, one individual,

and one industry association related to burden associated with the General Directive. Two transit agencies and an industry association expressed concerns at the potential financial and staffing burden associated the General Directive and asked for clarity on how FTA expects transit agencies to fund the required activities, particularly for smaller transit agencies. An industry association noted that the transit industry has faced resource challenges and a fiscal cliff in the wake of the COVID-19 pandemic. This commenter requested that FTA identify resources and funding that agencies can use to complete the General Directive's required actions and reporting. An additional transit agency expressed that FTA should ensure that agencies with limited resources are not inundated with reporting mandates that leave little time for deploying mitigations and strategies to combat assaults. One individual urged FTA to ensure that actions to protect transit operators are implementable in a quick and cost-effective way across transit systems of all modes and sizes.

One individual stated that the General Directive's reporting requirements are especially burdensome. This commenter asked how FTA would use the reported information to make transit workers safer. The commenter also argued that the General Directive would divert resources away from safety initiatives and that Federal funding for security improvements would be a better use of resources. One transit agency outlined burden-related challenges associated with the requirements of the General Directive for agencies that do not have automated methods of capturing the data. Specifically, the agency cited the burden related to manual data collection; acquisition, implementation, and maintenance of automated data collection methods; training expenses; and data analysis and reporting. The commenter also expressed concern about liability that could result from inaccurate data reporting and appropriate safety measures, including legal consequences, damaged public reputation, financial burden, and negative impact on transit worker well-being.

In contrast, one labor organization stated that the General Directive is not burdensome or unwarranted, given the scale of the assault issue.

FTA response: FTA acknowledges the comments submitted regarding the burden associated with the General Directive. FTA notes that the General Directive is leveraging existing SRM and SA processes that transit agencies already carry out to meet the

requirements of the PTASP Final Rule. Specifically, the General Directive requirement for transit agencies to conduct SMS activities to address the risk of assaults on transit workers is the same as the SMS processes required under PTASP. These processes are scalable and flexible and enable efficient implementation of mitigations at transit agencies of all sizes. To further minimize burden, the General Directive permits agencies to submit the results of a safety risk assessment conducted within 12 months prior to issuance of the General Directive.

The General Directive imposes an additional requirement to submit information about how transit agencies are assessing, mitigating, and monitoring the safety risk related to assaults on transit workers. To minimize burden associated with this reporting requirement, FTA has developed a reporting tool called Safety Management System (SMS) Report to streamline the submission of information required by the General Directive. This new tool is built using the Transit Integrated Appian Development (TriAD) platform that houses other applications transit agencies already use, such as Transit Award Management System (TrAMS) and the NTD reporting tool.

FTA notes that transit operators may use a variety of FTA funding sources for the implementation of their ASPs and SMS processes, including Urbanized Area Formula Grants (Section 5307), State of Good Repair (Section 5337), and Bus and Bus Facilities (Section 5339) funds. Those funding sources may be used for activities that are eligible under the applicable grant program. FTA encourages transit agencies to contact their FTA Regional Office for confirmation of specific project eligibility. FTA notes that the General Directive does not establish new NTD requirements for data collection and ongoing data reporting. Further, the General Directive does not require the implementation of any specific mitigation.

FTA also notes and agrees with the labor organization that commented stating that the General Directive is not burdensome or unwarranted given the scale of assaults on transit workers as an issue for the industry.

In response to the commenter that asked how FTA would use information collected by this General Directive to make transit workers safer, FTA notes that the General Directive helps FTA confirm that transit agencies are assessing and mitigating risk associated with assaults on transit workers. Additionally, the General Directive enables FTA to collect information on

mitigation effectiveness from a wide range of transit agencies, which will allow FTA to better address the safety concern at a Federal level, enable FTA to disseminate information to the transit industry regarding mitigations that have proven effective for specific transit applications, and inform future Federal action to protect transit workers, including rulemakings such as the planned Transit Worker and Public Safety rule.

F. Funding and Technical Assistance

Comments: One individual and four transit agencies argued that additional Federal funding is needed to address assaults on transit workers. An industry association and a transit agency recommended that FTA allow transit agencies to use Section 5307 funds for implementation of mitigations identified through the safety risk assessment. Similarly, several commenters stated that funding is needed for measures such as increased security patrols on buses, new technology, and other safety and security measures. One transit agency and an industry association urged FTA to allow transit agencies to use Section 5307 funds for consultant support for the safety risk assessment. A separate agency suggested that FTA establish grant programs to support agencies' acquisition and implementation of automated data capture technology. This commenter also recommended that FTA should establish emergency financial assistance packages to support transit agencies facing data collection challenges and to help agencies bridge financial gaps during off-cycle budget periods.

Two transit agencies suggested that FTA provide personnel to patrol transit systems, similar to the use of Federal Air Marshals or airport security officials. One transit agency, a city department of transportation, and an industry association urged FTA to consider funding a pilot program for the design and manufacture of buses with fully enclosed bus operator compartments. The industry association further clarified that it supported a pilot program to gather data, but it did not support the use of prototype buses in rehabilitation or new procurements.

One transit agency requested training about how to implement the General Directive through SMS. One transit agency commented that agencies may not have the training, resources, or "know-how" about how to turn risk assessments into action and requested further guidance from FTA. Another transit agency recommended that FTA should establish technical assistance,

training, resources, and capacity building programs to assist transit agencies with issues such as data reporting and analysis. The agency further suggested that FTA establish a regular review process with input from transit agencies to evaluate the effectiveness of assault data reporting guidelines and funding programs, as well as a public awareness campaign about assault data reporting.

One commenter suggested that FTA provide training regarding how the General Directive works in conjunction with standards and protections of the Occupational Safety and Health Administration (OSHA) and suggested creating a forum for agencies to discuss possible conflicts between the General Directive and other directives.

Two transit agencies, a labor union, and an SSOA submitted comments requesting that FTA encourage collaboration between Federal, State, and local entities to facilitate the collection and sharing of best practices related to assaults, including information on safety risk mitigations and their effectiveness. The SSOA and one transit agency suggested that FTA engage transit agencies that have fewer incidences of assault, noting that they may be implementing mitigations that are informative to other transit agencies. Another transit agency recommended that FTA fold the results of the General Directive into the data collected from FTA's 2021 RFI on assaults on transit workers.

FTA response: FTA appreciates comments received regarding the need for Federal funds and resources to address the General Directive and other activities related to addressing assaults on transit workers. As explained above, FTA notes that the General Directive is leveraging current SMS processes required under the PTASP Final Rule and does not establish any new process requirements related to SRM and SA activities. Instead, the General Directive requires transit agencies to conduct a safety risk assessment regarding assaults on transit workers and identify safety risk mitigations or strategies, and submit to FTA, via form, the results of these SMS activities relating to assault. Transit operators may use a variety of FTA funding sources for the implementation of the SMS processes defined in their ASPs, including Urbanized Area Formula Grants (Section 5307), State of Good Repair (Section 5337), and Bus and Bus Facilities (Section 5339) funds. Those funding sources may be used for activities that are eligible under the applicable grant program. FTA encourages transit agencies to contact

their FTA Regional Office for confirmation of specific project eligibility. FTA appreciates the commenters' suggestions for additional Federal resources, including a transit version of TSA's Air Marshal program and additional assault prevention infrastructure focused grants, but notes that these suggestions are outside of the scope of this General Directive.

FTA appreciates the commenters' suggestions regarding technical assistance and training related to the General Directive and data reporting relating to assaults on transit workers. FTA will deliver a webinar to communicate the General Directive requirements, as well as a demonstration of Safety Management System (SMS) Report, the tool developed by FTA to facilitate reporting required by this General Directive. FTA also appreciates the commenters' suggestions to facilitate the collection and sharing of best practices and effective mitigations on this topic, including engagement with agencies that have fewer incidences of assault, aligning results from the General Directive with the 2021 RFI on assaults on transit workers, a review process for mitigations and funding, and a public awareness campaign. An outcome of the General Directive is FTA's collection of information on mitigations related to assaults on transit workers and their effectiveness. FTA will explore ways to share this information with the transit industry to support industry mitigation efforts.

G. Applicability

Comment: FTA received comments from transit agencies and individuals regarding the applicability of the General Directive. One individual urged FTA to exclude rural and small urban transit systems from the General Directive, arguing that these systems experience minimal assaults and that compliance with the General Directive would be burdensome for them. Another transit agency requested that FTA apply the General Directive only to Tier I providers, reasoning that the PTASP Final Rule adequately addresses assaults for Tier II providers and that Federal requirements are burdensome for smaller agencies.

One individual stated that measures to protect transit workers from assault should apply to all transit agencies, not just large systems. Another commenter stated that FTA should clarify that a large urbanized area is defined as having a population greater than 200,000. An operator of an automated rail system stated that it does not have operators on board and therefore has no

potential of assaults on transit workers. This commenter asked how it should respond to comply with the General Directive.

FTA response: FTA appreciates the comments regarding General Directive applicability. In response to the commenter that suggested FTA exclude Tier II providers (as defined by FTA's Transit Asset Management rule, 49 CFR part 625) and rural and small urban systems from the General Directive requirements, FTA notes that the General Directive applies only to agencies that are subject to the PTASP Final Rule. Thus, recipients that receive funds only under 49 U.S.C. 5310 and/or 49 U.S.C. 5311 are excluded from the General Directive, unless they operate a rail fixed guideway public transportation system. FTA notes that the General Directive applies to all transit agencies subject to the PTASP Final Rule based on FTA's identification of a national-level hazard regarding assaults on transit workers, which exists at transit agencies of all sizes and across all modes of public transportation, not just those in large urbanized areas.

FTA acknowledges the commenter who suggested that measures to address assaults should apply more broadly than just large transit systems. FTA confirms that the General Directive applies to small providers that are recipients or subrecipients of Section 5307 funds. FTA notes that these small providers are already required to have the SRM and SA processes in place that the General Directive draws upon. Further FTA notes that the SRM and SA process requirements are flexible and scalable and that nothing in the General Directive establishes new or more rigorous SRM or SA process requirements. Some smaller transit agencies may reach very different conclusions than some larger transit agencies based on their own operating realities and risk exposure.

Regarding clarification of a large urbanized area, FTA notes that the commenter slightly misstated the definition. As stated in the General Directive summary section, a large urbanized area is an urbanized area with a population of 200,000 or more. In response to the commenter that asked how an automated rail system that has no potential for assaults on transit workers should respond to comply with the General Directive, FTA notes that the General Directive applies to all transit agencies that are subject to the PTASP Final Rule, including those that provide automated rail service with no operators. FTA clarifies that the risk associated with assaults on transit workers is broader than just transit

operators. For instance, a car cleaner or maintenance worker onboard an automated rail vehicle in revenue service may face a risk of assault similar to that of an operator on a staffed vehicle. A safety risk assessment can help an agency and its Safety Committee determine whether the level of risk is acceptable, and therefore that mitigation is not required, or that the level of risk is unacceptable, and mitigations must be identified.

H. Definition of "Assault on a Transit Worker"

Comments: FTA received comments from several commenters regarding the definition of "assault on a transit worker," including transit agencies, individuals, and a transit industry association. Commenters expressed concern regarding a lack of clarity related to the definition, and many argued that this may impact the effectiveness of assault data collection and analysis. Three transit agencies and one transit industry association requested guidance, such as illustrative examples, about how to interpret the phrase "interferes with" to ensure the definition is applied consistently and effectively. One of the transit agencies requested that FTA work with the industry to develop a more precise definition of the phrase. In addition, one transit agency specifically requested guidance about how to apply the "knowingly" and "with intent" elements of the definition.

Two transit agencies requested clarification regarding whether the definition includes non-physical assaults. One industry association commented that if the definition includes verbal abuse, this could result in an increase in worker compensation applications, which could negatively impact costs and transit worker availability.

Several commenters urged FTA to develop guidance or technical assistance and training resources to help the industry interpret and apply the definition. Some commenters recommended that FTA collaborate with transit agencies and transit workers when developing such guidance. One individual requested that FTA provide guidance on the definition before requiring additional reporting through the General Directive.

One transit industry association and one transit agency urged FTA to consider and address how differences in State laws could affect a transit agency's ability to respond to the General Directive. The industry association noted that in some States, "interference with a transit worker's duties" may not

be a crime at all. The commenter further noted that many states require agencies to consult with prosecutors when an assault occurs, and that it is unclear how the actions proposed in the General Directive would work in these situations. One transit agency asked FTA to clarify whether agencies should use their State law definition of "assault" for purposes of the General Directive. One transit agency argued that FTA should encourage transit agencies to adopt assault definitions established in law enforcement contexts, such as the definition used by the Federal Bureau of Investigation (FBI).

One individual requested that FTA define "transit employee" in the General Directive to include all transit employees.

FTA response: FTA acknowledges the comments received regarding the definition of "assault on a transit worker" and appreciates the challenges associated with implementing new definitions. FTA notes that the General Directive uses the same definition of "assault on a transit worker" that is used for purposes of 49 CFR part 673, the National Safety Plan, and NTD reporting. This is consistent with the statutory definition in 49 U.S.C 5302. FTA confirms that this statutory definition includes non-physical assaults. FTA disagrees with the commenter who suggested that FTA delay the General Directive reporting requirements until issuing guidance. FTA's NTD program already has developed training and published guidance to support transit agency compliance with reporting requirements and associated definitions. FTA may consider providing additional guidance on specific aspects of the definition, and additional technical assistance in collaboration with transit agencies to support compliance with the assault on transit worker reporting requirements in the General Directive.

FTA considered the comments regarding the varied definitions and treatment of assault on a transit worker by States across the country, and the suggestion to adopt assault definitions established in law enforcement contexts. FTA understands that State and local law enforcement may have varied approaches and classification systems for handling assault data. However, FTA does not believe that this impacts a transit agency's ability to comply with the requirements of the General Directive because a transit agency can use assault data, as reported to the NTD using the statutory definition, as inputs to a safety risk assessment. FTA also notes that transit

agencies should not use state law assault definitions for purposes of responding to the General Directive. As noted above, transit agencies should use the definition of “assault on a transit worker” in 49 U.S.C. 5302, which is the same definition for purposes of PTASP, the National Safety Plan, and NTD reporting.

FTA notes that the General Directive does not use the term “transit employee,” but rather “transit worker.” This term has the same definition as the one provided in the PTASP Final Rule at 49 CFR part 673.

I. Safety Risk Mitigations

Comments: FTA received several comments from individuals, transit agencies, labor unions, an SSOA, and a transit industry association that suggested specific mitigations to address assaults on transit workers. In addition, some transit agency commenters provided examples of mitigations and other actions they are already implementing. Commenters recommended a variety of mitigations, including physical barriers to separate operators from passengers; fare collection technology and enforcement policies; revised operating procedures; surveillance technologies; policing/patrol strategies; public awareness campaigns; signage; autonomous technology; and de-escalation training. One commenter suggested that the National Institute for Occupational Safety and Health (NIOSH) hierarchy of controls is a useful tool for assessing and controlling exposure to hazards. This commenter expressed that in the long-term, FTA should focus on actions in the “elimination” category of the NIOSH framework, such as increasing autonomous technology to eliminate or reduce transit workers’ exposure to safety hazards.

A labor organization specifically recommended that FTA mandate certain mitigations, including fully enclosed protective barriers, signage, personal security training, surveillance technologies, and additional de-escalation training. This commenter also advocated for federal regulations giving transit workers the right to take personal security actions, as well as the creation of voluntary programs for transit workers to obtain personal security training and to become auxiliary law enforcement officers. One transit agency suggested that FTA require a minimum amount of safety and mental health first aid training hours, and that transit agencies promote their safety and security reporting and intervention systems publicly. An individual commenter advocated that FTA require

transit agencies to perform security self-assessments about the need for uniformed resources, and that FTA explore creating national law enforcement partnerships and investigate issues related to authorities for transit police.

One individual expressed concern that some mitigations may conflict with other regulations such as the Federal Motor Vehicle Safety Standards (49 CFR part 571), noting also that manufacturers do not offer an off-the-shelf option for operator barriers.

FTA response: FTA appreciates the examples of safety risk mitigations provided through comment submissions and looks forward to reviewing the mitigation-related information submitted in response to the General Directive. FTA also notes that it is not mandating that transit agencies implement specific mitigations through the General Directive. Transit agencies and their Safety Committees must use the SRM process to identify mitigations appropriate to their agencies, which may include mitigations such as those suggested by the commenters. FTA notes that it does not intend for mitigations to conflict with other regulations, and transit agencies should ensure that mitigations identified as a result of their safety risk assessment are in compliance with other regulations to which they are subject. FTA is also exploring mandatory standards, and FTA intends to use responses to the General Directive to inform future Federal action to protect transit workers, including rulemakings such as the planned Transit Worker and Public Safety rule.

J. Role of the Safety Committee

Comments: FTA received comments from several commenters, including labor unions, individuals, and transit agencies, regarding the role of the Safety Committee in the activities required by the General Directive. One individual noted the importance of involving the voice of frontline transit workers in addressing safety issues affecting workers. One transit agency voiced that its Safety Committee has been an effective forum to discuss safety information and has enabled the agency to better partner with and empower its frontline workers.

1. Role of the Safety Committee in Safety Risk Assessment

Three labor unions and one individual recommended that FTA require the Safety Committee to conduct the required safety risk assessment. In contrast, one individual and one transit agency voiced that the Safety Committee

should not perform safety risk assessments, arguing that the Safety Committee does not have the training or time to do so. The individual argued that the risk assessment should be created by the transit agency, and that the Safety Committee’s role should be to vet the risk assessment and contribute to mitigation strategies.

2. Role of the Safety Committee in Safety Risk Mitigations

Regarding the safety risk mitigation process, one labor organization argued that language requiring agencies to “involve” Safety Committees is not strong enough, and that the Bipartisan Infrastructure Law requires that Safety Committees “identify and recommend” mitigations. A transit agency stated that the language in the proposed directive appeared to indicate that the Safety Committee is an advisory body and asked FTA to clarify the Safety Committee’s role. One individual recommended that FTA consult with bus operators and their respective union leadership for recommendations regarding mitigations.

One labor organization and two individuals stated that Safety Committees should be given access to the transit agency’s budget and grant information so that it is empowered to propose effective mitigations. Two of these commenters also stated that Safety Committees need access to safety incident documentation, with one commenter recommending that this should be done on a weekly basis.

One individual expressed concern about Question (c)(7) of the proposed General Directive, which would require agencies to explain why the Safety Committee did not identify or recommend safety risk mitigations identified through the agency’s safety risk assessment. The commenter argued that this question allowed agencies to exclude their Safety Committee from the process and asked FTA to explain the reason for this. The commenter further argued that the Safety Committee’s involvement in the process needs to be substantive. One labor organization recommended that FTA should clarify that if a transit agency’s answer to this question indicates that the Safety Committee did not identify or recommend mitigations, the agency will be out of compliance with the General Directive and subject to enforcement action unless the transit agency comes into prompt compliance.

One labor organization argued that FTA should use the General Directive as a mechanism to confirm compliance with the Safety Committee-related requirements established in the PTASP

Final Rule. Specifically, the commenter urged FTA to require transit agencies that serve large urbanized areas to note for each anti-assault infrastructure mitigation, whether the Safety Committee previously found that the mitigation would reduce assaults on transit workers. It also stated that if the Safety Committee previously opined that the mitigation would reduce assaults, FTA should consult the transit agency's ASP to ensure that the safety risk reduction program includes a plan for implementing the mitigation. The commenter further stated that if the Safety Committee did not previously opine on the mitigation, then FTA should require prompt revision and resubmission of the safety risk reduction program.

3. Role of the Safety Committee in Monitoring Mitigation Effectiveness

Regarding monitoring mitigation effectiveness, a labor union commented that FTA should specify that the Safety Committee must evaluate the effectiveness of all completed anti-assault mitigations. This commenter further argued that the statement concerning such effectiveness required in Question (c)(17) must come from the Safety Committee itself, not from management.

4. Role of the Safety Committee in Required Reporting

Three labor organizations and one individual urged that FTA require Safety Committees to approve any agency submission made to FTA in response to this General Directive. One of these labor organizations voiced that Safety Committee approval is a mechanism for frontline workers to hold management accountable and is necessary to ensure the accuracy of reporting. This commenter urged that FTA should at a minimum require transit agencies to provide each Safety Committee member, or a frontline transit worker representative if no Safety Committee exists, with a copy of the report that is submitted to FTA in response to the General Directive. Two of these labor organizations voiced that if an agency does not have a Safety Committee, a frontline transit worker representative should be required to review and approve the report.

5. Other Comments Pertaining to Safety Committee

One labor organization and two individuals argued that the General Directive must address whistleblower and retaliation protections for frontline transit worker representatives serving on Safety Committees. The labor

organization also stated that if a transit agency is subject to state sunshine laws, there should be public access to Safety Committee meetings. One individual suggested that FTA add release time for Safety Committee members to attend transit agency meetings, such as meetings of the Board of Directors.

Several commenters addressed other Safety Committee-related issues, including tiebreaking mechanisms and transit agency implementation of mitigations recommended by the Safety Committee. One individual requested that FTA require documentation of Safety Committee meetings, involvement of frontline workers, and evidence that the transit agency acted on the Safety Committee's recommendations.

FTA response: FTA appreciates the comments received regarding the role of the Safety Committee and agrees that Safety Committees are an important way for frontline workers to improve safety at their transit agency.

FTA acknowledges the comments regarding the Safety Committee's role in the required safety risk assessment. FTA notes that the General Directive relies on the Safety Committee and SMS requirements of 49 CFR part 673. Transit agencies should use the safety risk assessment process defined in their ASP to conduct the required risk assessment.

FTA agrees with the commenter that stated that Safety Committees must "identify and recommend" mitigations through the transit agency's SRM processes. However, it does not agree that any changes are necessary to the General Directive to clarify this. Section B of the General Directive cites 49 U.S.C. 5329(d)(5), which requires Safety Committees to "identify and recommend" mitigations. Given that the General Directive cites the statutory requirement, FTA does not believe it is necessary to restate the requirement in the General Directive. As FTA has communicated clearly through the PTASP Final Rule, the Safety Committee's role is not merely an advisory one. Safety Committees must perform the responsibilities defined in statute and the PTASP Final Rule, including the responsibility to identify and recommend mitigations. FTA appreciates the comment that recommended FTA consult with bus operators and their respective union leadership for recommendations. FTA notes that the PTASP requirement for Safety Committee involvement in identifying mitigations provides a venue for frontline transit worker representatives to recommend mitigations.

FTA acknowledges the suggestions that the Safety Committee have access to a transit agency's budget and grant information and safety incident documentation. FTA notes that the General Directive does not create a new role or requirement for the Safety Committee and relies on the Safety Committee, SMS, and recordkeeping requirements of 49 CFR part 673. The PTASP Final Rule includes a requirement for Safety Committee procedures to include how the Safety Committee will access transit agency information, resources, and tools, as required by 49 CFR 673.19(c)(5), which is inclusive of all data reasonably necessary for the Safety Committee to carry out its statutory responsibilities.

FTA acknowledges the comments regarding Question (c)7 of Section (c) of the General Directive, including the concern that this question allows transit agencies to not involve their Safety Committee in the General Directive process. FTA disagrees with this interpretation. As explained above, Section B of the General Directive explicitly requires Safety Committee involvement by stating that "each transit agency serving a large urbanized area must involve the joint labor-management Safety Committee when identifying safety risk mitigations to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment." FTA clarifies that Question (c)7 is intended merely to accommodate situations where the agency's Safety Committee chooses not to recommend a safety risk mitigation based on the results of the safety risk assessment. This question should not be interpreted to mean that an agency may exclude the Safety Committee from the General Directive process. FTA confirms that if a large urbanized area provider does not involve its Safety Committee in the safety risk mitigation process, the transit agency would be out of compliance with the General Directive and subject to appropriate enforcement action.

FTA acknowledges the suggestions that FTA require the Safety Committee or frontline transit workers to approve any submission made by the transit agency in response to the General Directive, or at a minimum receive a copy of the report submitted to FTA. While transit agencies and their Safety Committees may voluntarily adopt these mechanisms, FTA declines to require them. The Safety Committee's minimum responsibilities are provided by statute and regulation in 49 U.S.C. 5329(d) and 49 CFR part 673. Transit agencies should use existing PTASP Safety Committee, SMS, and recordkeeping

processes to address General Directive requirements.

FTA acknowledges the comments suggesting that FTA use the General Directive to confirm compliance with the PTASP requirements for Safety Committees, such as requiring transit agencies that serve large urbanized areas to note whether the Safety Committee previously found that each anti-assault infrastructure mitigation would reduce assaults on transit workers, and require transit agencies to include such mitigations in their ASPs as part of the safety risk reduction program. FTA also acknowledges the commenter that recommended that FTA specify that the Safety Committee must evaluate the effectiveness of all completed anti-assault mitigations and recommended that the statement concerning such effectiveness required in Question (c)(17) must come from the Safety Committee itself, not from management. As noted above, the General Directive does not create a new role or requirements for the Safety Committee and relies on the Safety Committee and SMS requirements of 49 CFR part 673 that agencies subject to the PTASP Final Rule are already required to implement. FTA notes that transit agencies that are out of compliance with PTASP Final Rule or the requirements of this General Directive are subject to appropriate enforcement action.

FTA appreciates the suggestions regarding additional Safety Committee-related issues, but FTA notes that these are outside the scope of the proposed General Directive. FTA refers commenters to the PTASP Final Rule for requirements regarding tiebreaking mechanisms, Safety Committee responsibilities, and recordkeeping.

K. Required Actions

1. Conduct a Safety Risk Assessment

I. Exemption

Comments: Two transit agency commenters asked for clarification regarding the safety risk assessment exemption for transit agencies that have conducted a safety risk assessment in the twelve months preceding the issuance of the General Directive. One of these commenters specifically requested clarification about what would exempt a transit agency from the requirement, and the time period for the exemption. The other commenter asked FTA to clarify whether other types of reviews or assessments could trigger an exemption from conducting a full safety risk assessment. This commenter requested that the exemption window should be expanded to 24 months, arguing that the findings of a safety risk

assessment conducted prior to the 12-month window will most likely yield the same results as a safety risk assessment conducted within the window. This commenter stated that it has conducted several safety risk assessments within the 24-month window, and that requiring it to repeat them would be unduly burdensome.

FTA response: FTA acknowledges the commenters that requested clarification on the safety risk assessment exemption for transit agencies that have recently conducted a safety risk assessment on assaults on transit workers. FTA confirms that if a transit agency has completed a safety risk assessment for assaults on transit workers in the 12 months preceding the publication of this General Directive, and if the transit agency continues to believe that the results of that safety risk assessment are relevant, the transit agency need not conduct a new safety risk assessment for the purposes of this General Directive. FTA established this exemption to reduce the burden of conducting another safety risk assessment if an agency has already completed one within the last year. In these situations, General Directive submissions should contain information on the results of the assessment and on the implementation and effectiveness of any mitigations identified through the safety risk assessment.

FTA notes that this exemption applies only to a safety risk assessment conducted using the processes established under 49 CFR 673.25(c) and defined in a transit agency's ASP. Finally, FTA disagrees with the commenter who recommended extending the exemption timeframe from 12 months to 24 months. FTA believes that given the seriousness of the assaults on transit workers concern and industry trends that show increasing numbers of assaults, a safety risk assessment conducted more than 12 months before the publication of the General Directive may not reflect the agency's current risk levels for assaults on transit workers. FTA therefore disagrees that a safety risk assessment conducted during a 24-month window would yield the same results as one conducted within the 12-month window. FTA understands the commenter's concern regarding burden, but as explained in Section E, FTA believes that any burden imposed by this General Directive is justified.

II. Process

Several commenters, including transit agencies and one labor union, submitted comments related to the safety risk assessment process. One transit agency

noted that it already has completed a safety risk assessment that is being reviewed by its Safety Committee. One transit agency supported the proposed requirement to complete a safety risk assessment, stating that hazard analysis and safety risk assessments are imperative to understand what works and to see what the industry is doing.

One labor union argued that FTA should require the safety risk assessments to be conducted by an independent third party to ensure that there will be a more objective assessment of risk and actions taken to protect workers.

One transit agency supported the requirement to perform a safety risk assessment but requested that FTA provide training to clarify the difference between this requirement and the PTASP SRM process. Another transit agency noted that the General Directive's collection of specific data in Section C could indicate that FTA is requiring agencies to use a process different from the SRM process defined in a transit agency's ASP. The commenter requested clarification on this point. One commenter recommended that FTA create a checklist and defined process regarding safety risk assessments for assaults on transit workers, including a conflict resolution process for disagreements between management and labor.

Two transit agencies requested that FTA provide definitions or thresholds for the likelihood and severity categories in an agency's safety risk assessment matrix, with one specifically expressing confusion about how to distinguish minor first aid from minor injury events. The other transit agency argued against using unmeasurable quantifiers such as "significant" or "minor," in the assessment as they leave room for interpretation when considering monetary loss, noting it may be more effective to quantify this with tangible measures such as vehicle loss rather than subjective monetary calculations. One labor union requested clarity on how agencies should calculate overall risk ratings. The commenter asked FTA to confirm whether agencies should average the numerical "likelihood" values for potential consequences, and how an agency should calculate the overall letter "severity" values. One transit agency commenter recommended that FTA use a different safety risk matrix for collecting General Directive results, arguing that the matrix used in the proposed General Directive differs from matrices published in other FTA technical assistance materials.

One transit agency commenter argued that the required information in the General Directive is too broad for a single safety risk assessment and asked FTA to clarify whether the data should be aggregated by different modes of operation or as an agency-wide assessment. This commenter noted that in their experience, the associated risk is higher for bus modes than rail, and combining bus with rail for the purposes of the assessment would trigger additional reporting requirements established by the transit agency's SSOA. One transit agency proposed that FTA allow agencies to either conduct a single safety risk assessment of the risk associated with assaults on transit workers or compile the results of multiple safety risk assessments with the risk of assaults on transit workers to provide the information requested in the directive.

One transit agency argued that the General Directive should require or encourage the assessment of physical assault and non-physical assault separately, noting that there is likely to be a difference in both likelihood and severity for each.

FTA response: FTA acknowledges the commenter that noted that it already has completed a safety risk assessment that is being reviewed by its Safety Committee, and notes that if the safety risk assessment falls within 12 months of issuance of the General Directive, then it falls within the exemption for a transit agency to submit the results of that safety risk assessment as part of the response required by the General Directive. FTA appreciates the commenter that expressed support for the proposed requirement to complete a safety risk assessment and agrees that safety risk assessments are valuable.

FTA acknowledges the commenter that argued FTA should require the risk assessments to be conducted by an independent third party to ensure that there will be a more objective assessment of risk and actions taken to protect workers. FTA notes that the General Directive requires transit agencies to follow their own SRM and SA processes, as established under the PTASP Final Rule and defined in their ASP, to minimize the burden associated with complying with the General Directive. FTA notes that the PTASP Final Rule includes requirements for

conducting safety risk assessments and for establishing and carrying out safety risk reduction programs, but the PTASP Final Rule does not require agencies to conduct safety risk assessments through independent third parties. The process defined in a transit agency's ASP may rely on an independent third party, but FTA does not require a transit agency to do so.

FTA acknowledges the commenter that asked for clarification and training on the difference between the General Directive requirements and the SRM requirements in the PTASP Final Rule, and the commenter that asked whether FTA's collection of information could indicate that FTA is requiring transit agencies to use a different process from the SRM process defined in a transit agency's ASP. FTA notes that the General Directive does not require a specific safety risk assessment methodology beyond what is required by the PTASP Final Rule, and FTA confirms that it expects agencies to use the safety risk assessment processes documented in their ASP to conduct the safety risk assessment required by the General Directive. FTA encourages agencies to visit the PTASP website at <https://www.transit.dot.gov/ptasp> for technical assistance resources on SRM requirements. In response to the commenter who argued that FTA should provide a checklist for conducting safety risk assessments for assaults on transit workers, including a conflict resolution process, FTA notes that the General Directive relies on the processes established by transit agencies under 49 CFR part 673. This provides significant flexibility to transit agencies in the development and deployment of safety risk assessment processes. Transit agencies and their Safety Committees should refer to the dispute-resolution requirement at 49 CFR 673.19(c)(8) for the resolution of Safety Committee disputes.

FTA acknowledges the commenter that asked FTA to provide definitions or thresholds for the likelihood and severity categories in the matrix presented in the General Directive, and noted confusion about how to distinguish between minor first aid and minor injury events. FTA disagrees with providing additional likelihood or severity criteria in the General Directive as transit agencies may use different

methods or measures for quantifying likelihood and severity. By defining specific criteria in the General Directive, FTA could introduce conflicts with the safety risk assessment processes developed and used by transit agencies. FTA notes that the General Directive does not prescribe a matrix or quantifiers for purposes of conducting the safety risk assessment. Transit agencies should use the matrix or matrices they have adopted as part of their safety risk assessment process documented in their ASP. However, when agencies submit information in response to the General Directive, FTA is asking the transit industry to normalize their assessment results according to the scales in the matrix presented in the General Directive.

For example, a transit agency may use a matrix in which a middle tier of the severity scale is labeled medium, whereas in FTA's matrix the middle tier of the severity scale is labeled moderate. Normalizing by agencies at the point of submission allows for agencies to use their own varied processes for conducting safety risk assessments while submitting assessment results in a manner that supports industry-wide analysis and perspective. FTA has added the matrix to the General Directive and will add it to the Safety Management System (SMS) Report tool for submitting required responses to the General Directive. FTA acknowledges the comment that recommended that FTA use a different safety risk matrix for collecting General Directive results and noted that the matrix used in the proposed General Directive differs from other matrices published in FTA technical assistance materials. FTA disagrees with providing a different matrix because, as noted above, FTA's matrix sets the stage for normalizing results in a manner that supports industry-wide analysis and perspective.

In response to the commenter that asked for clarification on how agencies can average likelihood and severity ratings to report an overall risk rating for two potential consequences, FTA recommends that agencies select the rating reflecting the worst outcome among the potential consequences assessed to represent the overall risk rating.

Likelihood	5	Very High					
	4	High					
	3	Moderate					
	2	Low					
	1	Very Low					
			Negligible	Could cause minor first aid treatment	May cause minor injury, or minor property damage	May cause severe injury or major property damage	May cause death or permanent injury or destruction of property
			A	B	C	D	E
			Severity				

FTA agrees with the commenter that recommended that the General Directive allow for transit agencies to conduct mode-specific safety risk assessments and notes that the General Directive requires transit agencies to conduct safety risk assessments according to the safety risk assessment processes defined by their ASP. Similarly, FTA acknowledges the commenter that suggested the General Directive should require or encourage the assessment of physical assault and non-physical assault separately and the commenter that proposed that FTA allow agencies to either conduct a single safety risk assessment of the risk associated with assaults on transit workers or compile the results of multiple safety risk assessments with the risk of assaults on transit workers. FTA notes that transit agencies may take into account the distinction between non-physical and physical assaults when performing their safety risk assessment and determining likelihood and severity of the risk, and may take into account multiple safety risk assessments of the risk associated with assaults on transit workers. For purposes of reporting, agencies will need to enter overall risk ratings into the Safety Management System (SMS) Report tool for submitting required responses to the General Directive.

2. Identify Safety Risk Mitigations

Several commenters, including three individuals and a transit agency, expressed concerns related to mitigation requirements and the ability for a mitigation to be effective across all transit applications, given varied operational characteristics, resource availability, existing mitigation landscapes, and need for coordination with local and State authorities. One transit agency asked for clarification on how the General Directive requirements differ from using the SRM processes

required by 49 CFR part 673, including requirements to assess, track, monitor, and report data to FTA. One commenter asked FTA to include specific language that would allow for mitigations to be scalable to fit the size of an agency.

One transit agency suggested that FTA provide a categorized list of mitigations identified through its 2021 Request for Information (86 FR 53143), and that transit agencies should then document in their ASP which of those mitigations they are implementing.

One industry association and one transit agency commenter argued that informed strategies and mitigations to address assaults on transit workers come from a diversity of areas within a transit agency and recommended that FTA expand the responsibility for identifying and implementing mitigations beyond the role of the Safety Committee and Chief Safety Officers. The industry association noted further that FTA should coordinate with operations and police/security departments to ascertain the best information and data as it pertains to the General Directive.

FTA response: FTA reiterates that the General Directive does not mandate any specific mitigation, and a transit agency or Safety Committee may determine, as a result of the safety risk assessment, that no mitigation is necessary to address the risk of assaults on transit workers. The General Directive requires transit agencies to use existing SRM and SA processes required by the PTASP Final Rule and defined in their ASP to assess safety risk related to assaults on transit workers, to identify any necessary safety risk mitigations, and to provide FTA with information about how they are assessing, mitigating, and monitoring the safety risk. As such, the General Directive reinforces the flexibility of the PTASP Final Rule and the ability of each transit agency and

Safety Committee to determine risk at their transit agency and to identify mitigations that may be appropriate for their unique operations. In response to the commenter that requested clarification on how the General Directive differs from using the SRM and SA processes required by 49 CFR part 673 to assess, track, monitor, and report data, FTA confirms that the General Directive leverages the SRM and SA processes required by the PTASP Final Rule. In response to the commenter that asked FTA to include specific language that would allow for mitigations to be scalable to fit the size of an agency, FTA declines to do so, because the General Directive reinforces the flexibility of the PTASP Final Rule.

In response to the commenter that suggested FTA provide a categorized list of mitigations identified through its 2021 Request for Information, and that transit agencies should then document in their ASP which of those mitigations they are implementing, FTA notes that the General Directive lists mitigation categories. Further, Safety Management System (SMS) Report, the tool developed by FTA to facilitate reporting required by this General Directive, will allow transit agencies to select mitigation categories that represent the mitigations they have identified, and provide additional detail about how mitigations apply to their unique operations.

FTA agrees with the commenter who argued that the identification of mitigations and strategies to address risk associated with assaults on transit workers benefits from a wide perspective. For the purposes of identifying mitigations, transit agencies may leverage any number of sources within their agency, such as operations, service planning, hiring, and others, as well as external sources, such as industry associations, academia, and

consultants. The General Directive does not limit the use of sources for this purpose. FTA also notes that it remains the responsibility of the transit agency and Safety Committee to conduct the actions required by the General Directive.

FTA acknowledges the commenter who noted that a transit agency's safety office should coordinate with operations and police/security departments to ascertain the best information and data as it pertains to the General Directive. FTA agrees with the commenter's position that a transit agency can benefit from a wide perspective across the organization and community. FTA encourages transit agencies to use the appropriate subject matter experts and information sources when conducting safety risk assessments and identifying safety risk mitigations. FTA notes that the General Directive does not limit the use of subject matter expertise.

3. Submit Required Information to FTA

I. Mitigations Identified or Implemented

Comments: FTA received comments from several commenters, including transit agencies and labor unions, in response to the proposed General Directive requirements for transit agencies to provide information related to mitigations transit agencies have identified or implemented to address the safety risk associated with assaults on transit workers (Questions (c)(8) through (c)(14)).

Two transit agency commenters noted that the General Directive did not appear to allow transit agencies to provide information related to assault mitigations that were developed prior to the required safety risk assessment. One of these agencies recommended that the General Directive include a mechanism to acknowledge three years of prior mitigations that agencies have implemented. Both commenters recommended that FTA collect implementation and effectiveness information on these existing mitigations.

One industry association commented that many of the mitigations listed in Question (c)(8) already are being implemented at many transit agencies, and some are too costly. This commenter requested that FTA consider if any of the listed mitigations should be removed or added. It noted that self-defense training is another possible mitigation but would require extensive training and should be used only as a last resort.

One transit agency commenter recommended that FTA require transit agencies to include mitigations that

jurisdictional partners are implementing. The agency noted that it has been actively working internally and with its jurisdictional partners to find holistic relief to the issue of assaults on transit workers. This commenter also recommended that the mitigations be limited to things over which a transit agency has control and authority.

A labor organization commented on two of the listed mitigations under "operating policies and procedures." First, it stated that permitting discharging passengers between designated stops is ineffective and creates additional problems. Second, it noted that there is a need for policies and procedures permitting transit workers to discharge passengers when they engage in behavior that endangers workers or passengers.

Two transit agency commenters suggested that FTA should clarify or define "personal security training" in Question (c)(8). One of these commenters also suggested that FTA provide recommended training content for this type of training.

FTA response: FTA acknowledges the commenters that voiced opinions about the mitigations listed in Question (c)(8), including concerns that the mitigations are already being implemented, may be too costly to implement, or that transit agencies would not be able to report mitigations developed prior to the latest safety risk assessment. FTA reiterates that it is not mandating any of the mitigations listed in Question (c)(8). As explained above, transit agencies and their Safety Committees will use the existing SRM process defined in their ASP and have flexibility to recommend mitigations that are appropriate to a transit agency's unique circumstances. In addition, FTA notes that effective safety risk assessments take into account existing safety risk mitigations. Transit agencies can report safety risk mitigations that were in place prior to the safety risk assessment as part of their General Directive submission. FTA agrees that collection of information related to the effectiveness of these mitigations is important information to help transit agencies address the risk of assaults on transit workers and shape future FTA action. Similarly, FTA does not discourage transit agencies from including mitigations that may be implemented by jurisdictional partners external to the transit agency. FTA encourages transit agencies to report information on the mitigations that they actively monitor for effectiveness under the SA requirements of 49 CFR part 673.

FTA acknowledges the comment regarding policies and procedures

permitting transit workers to discharge passengers between designated stops. FTA disagrees that discharging passengers between designated stops is ineffective, and notes that transit agencies are increasingly testing policies to permit discharging passengers between designated stops to increase safety and comfort for passengers by letting them disembark closer to their intended destination than a designated stop. FTA also notes that policies permitting transit workers to safely discharge passengers that endanger transit workers or other passengers can increase safety for transit workers and passengers. The General Directive does not require that transit agencies adopt specific mitigations such as policies and procedures for discharging passengers, but transit agencies and their Safety Committee may identify the need for specific policies and procedures for discharging passengers as a safety risk mitigation.

FTA appreciates the comments received requesting clarification on the "personal security training" mitigation category used in Section(c)(8) of the General Directive. For purposes of this mitigation category, transit agencies can include any personal safety or security training that the agency has or plans to administer to mitigate safety risk associated with assaults on transit workers in addition to de-escalation training, which should be captured under the "de-escalation training" mitigation category.

II. Implementation Status

FTA received comments from transit agency commenters and one labor union commenter in response to General Directive requirements for transit agencies to report the status of a transit agency's implementation of mitigations chosen to address risk related to assaults on transit workers. One commenter argued that providing accurate mitigation completion dates in Questions (c)(11)–(12) would be extremely challenging in certain situations (e.g., installation of two-way radio and camera systems that have been in place for decades). It also argued that providing approximate percentages of completion in Question (c)(13) can be seen as arbitrary and will result in quickly outdated information. The commenter suggested instead that reporting a mitigation as "Planned," "In Progress," or "Complete" would be sufficient for the FTA to gain a high-level understanding of mitigation implementation status.

Another transit agency commenter argued that the proposed questions capturing information on mitigation

implementation status would not capture situations where an agency pivoted away from a mitigation shown to be ineffective or not viable. Further, the commenter argued that if an agency reported a 100% implementation status for mitigations, they would give the false impression that there would no longer be any instances of assaults on transit workers.

One transit agency requested that FTA expand Question (c)(14) to include information about external issues related to governance and the interaction between a transit agency and its jurisdiction.

FTA response: FTA acknowledges the comments received regarding the General Directive's requirement for transit agencies to report the implementation status of mitigations to address assaults on transit worker risk. FTA confirms that transit agencies will report the implementation status of each mitigation being implemented by the agency to address the risk associated with assaults on transit workers. FTA understands that it may be challenging to provide exact start and completion dates for mitigations that have been in place for several years, and asks that transit agencies provide the best available data in their responses to Questions (c)(11) and (c)(12). FTA disagrees with the commenter that argued that reporting implementation statuses such as "Planned," "In Progress," or "Complete" would be sufficient and that FTA should not ask for percentages in Question (c)(13). FTA notes that the use of percentages to approximate the level of implementation provides FTA with useful implementation data because it enables FTA to better quantify and analyze the implementation progress for mitigations throughout the industry. In response to the commenter that expressed concern regarding how FTA will interpret the implementation data submitted by transit agencies, FTA notes that it does not equate 100% mitigation implementation with 100% prevention of assaults on transit workers. Further, Safety Management System (SMS) Report, the tool developed by FTA to facilitate reporting required by this General Directive, will allow transit agencies to provide supporting context in response to Question (c)(17) to describe situations where an agency or its Safety Committee has identified a mitigation as ineffective and has slowed or stopped implementation as a result.

In response to the commenter that requested FTA expand Question (c)(14) to include information about external issues related to governance and the

interaction between a transit agency and its jurisdiction, FTA clarifies that the language "any external rate-limiting factors affecting implementation" in the question includes information about issues related to governance and interaction between a transit agency and external organizations.

III. Monitoring Effectiveness of Mitigations

Comments: FTA received comments from several commenters, including from a labor union and transit agencies in response to General Directive requirements for transit agencies to report information related to mitigation effectiveness monitoring (Questions (c)(15) through (c)(17)). One transit agency requested that FTA clarify its expectations for the requested effectiveness information. Another agency expressed concern at the challenge of evaluating the effectiveness of individual mitigations, noting that many agencies are implementing multiple interventions to address assaults. This commenter suggested that FTA instead should require that agencies provide an analysis of "before" and "after" assault data related to their collective interventions. Another agency argued that effectiveness measurement will be difficult unless agencies have access to historic assault on transit worker data, and effectiveness strategies therefore may look different in the short-term versus long-term.

One transit agency argued that FTA should not require agencies to report performance information or data used to make effectiveness determination in Question (c)(15), stating that it should instead rely on the assault on transit worker data the agencies already report to the NTD. This agency further argued that the effectiveness category options in Question (c)(16) are arbitrary, and agencies should not be required to report the information. This commenter noted that if transit agencies are required to report on effectiveness, then FTA should provide more details and/or guidelines to evaluate effectiveness, so each agency is using the same criteria to make this determination. Similarly, one transit agency commented that effectiveness metrics may not have measurable quantification.

One labor organization stated that mitigative effectiveness data should not be limited to barriers. It urged FTA to clarify that transit agencies must report the information in Questions (c)(11) through (c)(17) for each of its reported mitigations.

FTA response: FTA acknowledges the comments received regarding the General Directive's requirement for

transit agencies to report mitigation effectiveness information to FTA. FTA expects transit agencies and their Safety Committees to use their existing SA processes, required by 49 CFR 673.27(b)(2), to monitor the effectiveness of their safety risk mitigations.

FTA disagrees with the commenter that argued the options provided for mitigation effectiveness in Question (c)(16) are arbitrary and should be more quantifiable. FTA believes that the options provided in the question ("Effective", "Ineffective", and "Not Yet Determined") are self-explanatory. Similar to the question regarding risk ratings, FTA declines to provide more specific criteria, as transit agencies may use different measures for evaluating effectiveness. By defining specific criteria in the General Directive, FTA could introduce conflicts with the SA processes developed and used by transit agencies. In Question (c)(16), FTA asks that transit agencies normalize the reporting of their effectiveness determinations by reporting using the three categories listed in the question. This normalization will ensure that transit agencies report using consistent metrics. If an agency has not yet been able to make a determination that a mitigation is either effective or ineffective using its existing processes to monitor effectiveness, the agency can respond with "Not Yet Determined."

FTA acknowledges the commenters that raised concerns about the challenge of effectiveness determinations, and suggested that effectiveness should be based solely on the assault data that an agency reports to the NTD. FTA disagrees with these commenters. FTA notes that transit agencies and their Safety Committees may use assault event data reported to the NTD to measure mitigation effectiveness. However, they may also identify other information to determine if a specific mitigation is achieving a goal to reduce the risk associated with assaults on transit workers to an acceptable level. For example, agencies and their Safety Committees may measure effectiveness by leveraging information from transit worker safety reporting systems, customer feedback channels, technology-specific data outputs, and many other sources. FTA believes that transit agencies and their Safety Committees can efficiently leverage existing SMS processes to make effectiveness determinations.

In response to the commenter that urged FTA to clarify that transit agencies must report the information in Questions (c)(11) through (c)(17) for each of its reported mitigations, FTA

confirms that the General Directive requires agencies to report the information for each reported mitigation. Further, Safety Management System (SMS) Report, the tool developed by FTA to facilitate reporting required by this General Directive, will require transit agencies to enter responses for questions (c)(11) through (c)(17) for each reported mitigation before the agency's General Directive response can be submitted to FTA.

IV. Collection of Additional Information

Comments: FTA received comments from several commenters including a labor union, transit agencies, a transit association, and an individual recommending FTA expand or modify data collection requirements. One individual suggested that the General Directive collect more detailed information about mitigations, including the type of barriers identified and deployed. This commenter also noted that the type and length of de-escalation training varies across transit agencies. The labor union suggested that FTA require transit agencies to report detailed information on specific mitigations related to assaults on transit workers, including barriers, post-incident counseling and employee assistance programs, de-escalation training, and workplace violence prevention policies. The labor union also recommended that FTA collect data and information related to work hours lost and resignations due to assaults, related compensation and benefits costs, communications and security emergency response times, and the absolute numbers and the percentages of victims of assaults on transit workers who have been subject to discipline in connection with assaults since October 2022. This labor union recommended that FTA maximize the General Directive to collect any and all information that will be relevant to the FAST Act rule and other future rulemaking. In addition, this commenter urged FTA to require transit agencies to compare and report assault data for each mitigation that the agency lists in Question (c)(8), and to submit any reports from transit workers about the effectiveness of the mitigation.

One transit agency requested that FTA require transit agencies to report a separate category on sexual harassment, noting that female transit workers face unique challenges in the workplace that makes it difficult to retain diverse staff.

FTA also received comments related to the current level of assault reporting to the NTD. One individual suggested that transit agencies provide an updated statistic of assaults on an annual basis.

A transit agency and an industry association recommended that the NTD capture assaults on transit workers on a more granular level by breaking down reporting for additional categories of transit workers, arguing that this would provide more accurate data and assist in mitigation. One transit agency suggested that small agencies should report assaults on transit workers only once they reach a defined threshold number of assaults. This commenter noted that assaults at smaller agencies are typically non-physical assaults.

FTA response: FTA acknowledges the commenters that requested FTA require the collection of detailed data from respondents on specific mitigations and response activities for assaults on transit workers. FTA declines to add data collection requirements beyond the questions in the proposed General Directive to minimize the burden on transit agencies to respond to the General Directive. FTA understands the importance of the information reported through the General Directive to inform future FTA action, such as the planned Transit Worker and Public Safety rulemaking. FTA believes that the reporting required through the General Directive will provide FTA with necessary and useful information to inform these actions.

In response to the commenter requesting clarification, FTA confirms that it expects that if an agency has identified and implemented a safety risk mitigation in response to assaults on transit workers, the transit agency will provide this in its General Directive submission and include information on the effectiveness of the mitigation.

In response to the commenters requesting changes to NTD reporting requirements, FTA notes that changes to the NTD reporting requirements are outside of the scope of this General Directive.

L. Follow-Up Reporting

Comments: A transit agency and a labor union submitted comments regarding follow-up reporting after an agency's initial required response to the General Directive. One labor union argued that FTA should require transit agencies to conduct a safety risk assessment related to assaults on transit workers and provide information to the FTA on a regular basis, suggesting every two to four years. One transit agency noted that it would be useful to FTA if agencies annually update their safety risk assessments. Similarly, the transit agency suggested it would be beneficial for FTA to require ongoing re-assessment at annual intervals and to

include a mechanism and schedule for follow-up reporting.

FTA response: FTA appreciates the comments regarding requirements for additional follow-up reporting following the initial response required by the General Directive. FTA is not establishing additional follow-up submission requirements for transit agencies at this time to minimize the burden associated with responding to this General Directive. In the future, FTA may choose to request additional related information as necessary.

M. Sensitive Security Information (SSI) and Freedom of Information Act (FOIA)

Comments: One industry association commenter expressed concern that the information that transit agencies are required by the General Directive to report to FTA may be Sensitive Security Information (SSI). The commenter also expressed concern about Freedom of Information Act (FOIA) requests and whether the information and data submitted to FTA would be subject to FOIA. This commenter noted concern that transit agency submissions to FTA could create unwarranted exposure to liability and lawsuits that would incentivize transit agencies to limit the scope of their actions under the General Directive. This commenter urged FTA to consider how agencies can protect the analysis that FTA is requiring through the General Directive, including a recommendation that FTA preempt state sunshine laws.

FTA response: FTA acknowledges the commenter and notes that if transit agencies believe their submissions contain SSI, they should contact FTA to discuss an appropriate transmission method.

U.S. Department of Transportation statute at 49 U.S.C. 40119 and regulations at 49 CFR parts 15 and 1520 prescribe procedures for recipients to protect SSI in their possession, through adequate storage, marking, and transmission of protected records only to persons with a need to know. In the event FTA receives a FOIA request for SSI, FTA may withhold SSI records that are specifically exempted from FOIA disclosure by law. See, 5 U.S.C. 552(b)(3); 49 CFR 7.23(c)(3). Recipients reduce the risk of mishandling SSI by segregating and marking SSI in accordance with the requirements of 49 CFR 15.13.

N. Oversight and Enforcement

1. Federal Enforcement

Comments: FTA received several comments regarding FTA's enforcement of the General Directive, including from

labor unions and a transit industry association. One SSOA commenter requested clarification on how FTA plans to approach oversight and enforcement of this directive. One individual stated that it supported increased Federal oversight of transit agencies and that transit agencies should face regulatory consequences if they fail to reasonably safeguard transit workers. A labor union commenter requested that FTA strengthen language within the directive to say that “will” take enforcement action rather than that FTA “may” take enforcement action related to violation of the General Directive. This labor union commenter also requested that FTA change language regarding its authority to “withhold up to 25 percent” of financial assistance to recipients to “withhold 25 percent.” A separate labor union commenter stated that FTA would likely have to take enforcement action based on the General Directive and should begin preparing for this possibility. One local labor union commenter stated that FTA should establish punitive measures for transit agencies that fail to take adequate measures to protect transit workers and that FTA should seek authority to take enforcement action if it determines that it does not have the necessary legal authority.

One labor union argued that FTA should strengthen the General Directive’s enforcement provisions by establishing a mechanism for frontline workers and their representatives to notify FTA of noncompliance with the General Directive and defining a procedure by which FTA will accept and investigate reports of such noncompliance. The commenter also requested FTA define the phrase “written plan,” that FTA used in the proposed General Directive when describing FTA’s enforcement authority.

One transit agency asked whether FTA will deem an agency to be out of compliance if the reporting is too simplistic, noting that mitigations will either be in infancy or not yet started and the General Directive does not address follow-up reporting.

One transit agency suggested that FTA should provide recognition or rewards for agencies that demonstrate exceptional compliance with reporting requirements and that have launched innovative approaches to addressing safety issues and data reporting.

Some commenters suggested that FTA explore changing laws and increasing penalties related to assaults on transit workers, with some commenters requesting FTA provide guidance to States on this topic.

One transit agency commenter asked how FTA will measure the success of this General Directive, noting that many transit agencies already implement safety risk mitigations for assaults on transit workers.

FTA response: FTA acknowledges the comments received regarding oversight and enforcement of the General Directive. FTA plans to use its existing authorities to ensure that transit agencies are completing the required actions of the General Directive. Title 49 U.S.C. 5329 and CFR part 670 identify FTA’s safety enforcement authorities, which includes the withholding of up to 25 percent of a recipient’s Section 5307 funds to address situations where a “recipient has engaged in a pattern or practice of serious safety violations, or has otherwise refused to comply with the Public Transportation Safety Program, as codified at 49 U.S.C. 5329, or any regulation or directive issued under those laws for which the Administrator exercises enforcement authority for safety.” 49 CFR 670.23(b). FTA exercises discretion when enforcing the Public Transportation Safety Program and will take enforcement action as appropriate. FTA therefore declines to revise the General Directive to state that it “will” take enforcement action. FTA also notes that the enforcement language specifying withholding of “up to” 25 percent of funds is rooted in statutory language, which provides that FTA may withhold “not more than” 25 percent of Section 5307 funds. 49 U.S.C. 5329(g)(1)(E). FTA also acknowledges the commenter that asked FTA to consider exploring harsher penalties on individuals that assault transit workers but notes that FTA does not have authority to impose civil or criminal penalties.

FTA acknowledges the commenter that suggested establishing additional General Directive enforcement provisions and mechanisms. As noted above, FTA intends to exercise its existing enforcement authorities to ensure compliance with the General Directive. However, as noted in the PTASP Final Rule response to comments, FTA is considering the development of a mechanism to receive allegations of non-compliance with the PTASP requirements.

FTA appreciates the comment that requested clarity regarding the use of the term “written plan” to support the description of FTA’s enforcement authority. In the proposed General Directive, the enforcement section noted that “FTA may take enforcement action for any violation of this General Directive or the terms of any written plan adopted pursuant to this General

Directive in accordance with FTA’s authorities under 49 U.S.C. 5329, including but not limited to (1) directing a recipient to use Federal financial assistance to correct safety deficiencies; and (2) withholding up to 25 percent of financial assistance to a recipient under 49 U.S.C. 5307.” FTA generally includes this reference to “written plan” in Special Directives where recipients are required to develop corrective action plans in response to required actions of Special Directives. This reference is not necessary for this General Directive, and FTA has removed the term “written plan” from the enforcement section of the General Directive.

FTA appreciates the comments that asked how FTA would measure success for this General Directive, asked whether FTA will deem an agency to be out of compliance if it reports on mitigations either early in implementation or not yet started, and suggested that FTA should provide recognition or rewards for agencies that demonstrate exceptional compliance or innovative approaches to addressing safety issues and data reporting. Success will be primarily based on full compliance with the General Directive, which will show that the industry is using SRM and SA to address and monitor safety risk. Additional success measures for the General Directive will be an improved understanding of mitigation effectiveness to allow FTA to focus attention on specific mitigations and strategies that are shown to be effective in mitigating assaults on transit workers. FTA also notes that the General Directive includes specific options for reporting that a mitigation is in planning or in progress, and an agency may use these options to report on the status of any mitigation.

2. State Safety Oversight Agency Role

Comments: Three commenters requested clarification on the role of the State Safety Oversight Agency (SSOA) related to the General Directive, including two SSOAs and one transit agency. One SSOA commenter was supportive of the directive, but requested clarity as to the role of the SSOA in ensuring actions are taken or incorporated into the transit agencies’ monitoring activities. A separate SSOA commenter asked if FTA is assuming oversight responsibility of rail transit agencies on behalf of SSOAs for assaults on transit workers through the directive. One transit agency asked for clarification about State oversight and enforcement, noting that assaults disproportionately affect bus operators but SSOAs only oversee rail transit.

FTA response: FTA appreciates the comments received regarding clarification of the role of the SSOA related to the General Directive. FTA notes that while the General Directive does not establish any new oversight requirements for SSOAs, it does not remove any existing SSOA oversight responsibility. Safety Management System (SMS) Report, FTA's tool to collect responses required by this General Directive, will provide SSOAs with read-only access to the General Directive submissions made by the transit agencies they oversee under the State Safety Oversight Program, in order to support ongoing SSOA oversight activities. The General Directive does not establish any reporting or submission requirements for SSOAs. As the General Directive does not establish new reporting or oversight activities for SSOAs, SSOAs may choose to handle oversight of multimodal agency data in the same manner they currently conduct oversight activities for these agencies.

Authority: 49 U.S.C. 5329; 49 CFR 1.91, 670.25.

Veronica Vanterpool,
Deputy Administrator.

UNITED STATES DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

General Directive No. 24-1

Required Actions Regarding Assaults on Transit Workers

Summary

FTA is issuing a General Directive to address the significant and continuing safety risk associated with assaults on transit workers. FTA has identified a national-level hazard that transit workers must interact with the public and, at times, must clarify or enforce agency policies, which can present a

risk of transit workers being assaulted on transit vehicles and in revenue facilities.

Each transit agency that is required to have an Agency Safety Plan (ASP) under the Public Transportation Agency Safety Plans (PTASP) Final Rule (49 CFR part 673) must use the Safety Risk Management (SRM) processes required by 49 CFR 673.25(c) and documented in its ASP to conduct a safety risk assessment related to assaults on transit workers on the public transportation system it operates unless the agency has conducted a safety risk assessment related to assaults on transit workers in the twelve months preceding the date of issuance of this General Directive. Each transit agency must use the SRM processes required by 49 CFR 673.25(d) and documented in its ASP to identify safety risk mitigations or strategies necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the potential consequences. The joint labor-management Safety Committee of each transit agency serving an urbanized area with a population of 200,000 or more (large urbanized area) is responsible for identifying and recommending safety risk mitigations to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment per 49 U.S.C. 5329(d)(5). Each covered transit agency must also provide information to FTA on how it is assessing, mitigating, and monitoring the safety risk associated with assaults on transit workers.

General Directive and Required Actions

As authorized by 49 U.S.C. 5329(f)(2), 49 CFR 670.25, and Office of Management and Budget Control Number 2132-0580, FTA directs each transit agency that is required to have an ASP under the PTASP Final Rule at 49

CFR part 673 to take the following actions within 90 days of the publication of this General Directive in the **Federal Register**:

(a) Conduct a Safety Risk Assessment

The transit agency must use the SRM process documented in its ASP, as defined at 49 CFR 673.25(c), to conduct a risk assessment related to assaults on transit workers on the public transportation system it operates unless the agency has conducted a safety risk assessment related to assaults on transit workers in the twelve (12) months preceding the date of issuance of this General Directive.

(b) Identify Safety Risk Mitigations

The transit agency must use the SRM process documented in its ASP, as defined at 49 CFR 673.25(d), to identify safety risk mitigations or strategies necessary as a result of the agency's safety risk assessment. As required by 49 U.S.C. 5329(d)(5), each transit agency serving a large urbanized area must involve the joint labor-management Safety Committee when identifying safety risk mitigations to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment.

(c) Submit Required Information to FTA

The transit agency must submit to FTA responses to the following questions:

1. Date of completed safety risk assessment.
2. *Hazard assessed:* Transit workers must interact with the public and, at times, must clarify or enforce agency policies.
3. *Potential Consequence:* Transit workers are assaulted on transit vehicles.

Likelihood	5	Very High					
	4	High					
	3	Moderate					
	2	Low					
	1	Very Low					
			Negligible	Could cause minor first aid treatment	May cause minor injury, or minor property damage	May cause severe injury or major property damage	May cause death or permanent injury or destruction of property
			A	B	C	D	E
			Severity				

- Likelihood (choose the rating from FTA's scale that most closely matches your agency's scale)

- Severity (choose the rating from FTA's scale that most closely matches your agency's scale)

4. *Potential Consequence:* Transit workers are assaulted in revenue facilities.

Likelihood	5	Very High					
	4	High					
	3	Moderate					
	2	Low					
	1	Very Low					
			Negligible	Could cause minor first aid treatment	May cause minor injury, or minor property damage	May cause severe injury or major property damage	May cause death or permanent injury or destruction of property
			A	B	C	D	E
			Severity				

- Likelihood (choose the rating from FTA's scale that most closely matches your agency's scale)
- Severity (choose the rating from FTA's scale that most closely matches your agency's scale)

5. Risk Rating (provide overall risk rating resulting from safety risk assessment).

6. For transit agencies serving a large urbanized area, did the joint labor-management Safety Committee identify and recommend safety risk mitigations to reduce the likelihood and severity of the potential consequences of assaults on transit workers identified through the agency's safety risk assessment?

- Yes
- No

7. If you answered no to Question 6, please explain.

8. Please share the safety risk mitigations the transit agency and/or Safety Committee (at agencies serving large urbanized areas) has identified as a result of the agency's safety risk assessment to reduce the likelihood and/or severity of assaults on transit workers:

- Operator Area Protective Barriers
- Signage Informing Riders of Surveillance/Penalties
- Personal Security Training
- De-Escalation Training
- Operating Policies and Procedures (e.g., policies governing operator barrier deployment; policies and procedures to permit discharging

passengers between designated stops upon request; policies that operators should only state the agency fare policy once and not attempt to enforce fare payment; policies on response to interference; policies on taking de-escalatory action during incidents)

- Video/Audio Surveillance
- Covert/Overt Emergency Alarms (e.g., silent button to contact operations control center, a system for coded/covert operator communication with operations control center, exterior bus signage alerting the public to emergency onboard/call law enforcement)
- Automatic Vehicle Location
- Patrol Strategies (e.g., fare enforcement, security, transit police, local law enforcement)
- Communication Protocols (e.g., only request fare payment once)
- Public Awareness Campaigns
- Other

9. Please provide any additional information that would help FTA understand the details of your mitigation.

10. Implementation status for each safety risk mitigation

- Planned
- In Progress
- Complete

11. Safety risk mitigation implementation start date (actual or projected).

12. Safety risk mitigation implementation completion date (actual or projected).

13. If implementation is in progress, provide approximate percentage toward completion.

14. Please provide any additional information that would help FTA understand the progress of your mitigation (e.g., any external rate-limiting factors affecting implementation).

15. Performance information or data that the agency is using or will use to make effectiveness determination.

16. Effectiveness of safety risk mitigation:

- Effective
- Ineffective
- Not yet determined

17. If effectiveness of mitigation has been assessed by the agency or Safety Committee (at agencies serving large urbanized areas), a statement explaining why mitigations are either effective or ineffective.

Transit agencies must submit the required information to FTA within 90 days of the issuance of this General Directive via the FTA Safety Management System (SMS) Report on the Transit Integrated Appian Development (TriAD) Platform. Instructions on how to use the platform and submit the required information can be found at <https://www.transit.dot.gov/assaults>.

Enforcement

FTA may take enforcement action for any violation of this General Directive in accordance with FTA's authorities under 49 U.S.C. 5329, including but not limited to (1) directing a recipient to use Federal financial assistance to correct

safety deficiencies; and (2) withholding up to 25 percent of financial assistance to a recipient under 49 U.S.C. 5307.

Contact

For program matters, Stewart Mader, Senior Program Analyst for Safety Policy, FTA Office of System Safety,

telephone (202) 366-9677 or *Stewart.Mader@dot.gov*; for legal matters, Heather Ueyama, Attorney-Advisor, telephone (202) 366-7374 or *Heather.Ueyama@dot.gov*.

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Part II

Federal Communications Commission

47 CFR Part 1

Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024, Second Report and Order; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 24–86; MD Docket No. 24–85; FCC 24–93; FR ID 244040]

Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024; Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024, Second Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises its Schedule of Regulatory Fees to recover \$390,192,000 that Congress has required the Commission to collect for its fiscal year (FY) 2024. Sections 9 and 9A of the Communications Act of 1934, as amended (Act or Communications Act), provides for the annual assessment and collection of regulatory fees by the Commission.

DATES: Effective September 25, 2024. To avoid penalties and interest, regulatory fees should be paid by the due date of September 26, 2024.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order (Report and Order)*, FCC 24–93, MD Docket No. 24–86 and MD Docket No. 24–85, adopted on September 6, 2024, and released on September 6, 2024. The full text of this document is available for public inspection by downloading the text from the Commission's website at https://transition.fcc.gov/DailyReleases/Daily_Business/2017/db0906/FCC-17-111A1.pdf.

Administrative Matters

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Report and Order* on small entities. The FRFA is set forth in the back of this document.

Final Paperwork Reduction Act of 1995 Analysis

This document contains a non-substantive change to information requirements that were previously reviewed and approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The change will be submitted to the Office of Management and Budget for review as a non-substantive change. Because this change is non-substantive, there is no new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

People With Disabilities

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Introduction

Each year, the Commission must adopt a schedule of regulatory fees to be collected by the end of September. For fiscal year (FY) 2024, the Commission is required to collect \$390,192,000 in regulatory fees, pursuant to section 9 of the Communications Act of 1934, as amended (Act or Communications Act) and the Commission's FY 2024 Further Consolidation Appropriations Act. In the *Report and Order*, we adopt the regulatory fee schedule to assess and collect \$390,192,000 in congressionally required regulatory fees for FY 2024. The regulatory fee schedule we adopt for FY 2024 was proposed in the Commission's annual regulatory fee notice of proposed rulemaking (*FY 2024 NPRM*) (89 FR 53276, June 25, 2024), as modified herein, and as set forth in tables 3 and 4.

The *Report and Order* revises the allocation of Space Bureau Full-Time Equivalents (FTE) burdens between Geostationary Orbit (GSO) and Non-Geostationary Orbit (NGSO) space station fee categories using the existing

methodology for calculating their proportional share of regulatory fees; and keeps in place the existing allocation of Space Bureau FTE burdens between NGSO “less complex” and NGSO “other” space stations. The *Report and Order* also adopts the proposals in our *FY 2024 NPRM*, with some modifications. Similar to the reallocation process conducted in FY 2023, the Commission also reallocates approximately 61 indirect FTEs as direct FTEs to one of the Commission's core licensing bureaus. Such reallocations reflect our conclusion that we can determine, with reasonable accuracy for this fiscal year, that certain FTE work in the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau is sufficiently linked to the oversight and regulation of regulatory fee payors in a core bureau such that the FTE burden of that work should be allocated as direct to that core bureau for regulatory fee purposes. The direct FTE allocations used in calculating regulatory fees in the Report and Order also reflect the fact the Commission reallocated all the authorities and functions of the (former) International Bureau to the new Space Bureau and a new Office of International Affairs (OIA). Consistent with our long-standing regulatory fee methodology, the Commission implements these reallocations, for regulatory fee purposes, for FY 2024.

Additionally, in the *Report and Order*, the Commission adopts the proposal in the *FY 2024 NPRM* for the calculation of television broadcaster regulatory fees, using our traditional methodology of population-based full-service broadcast television regulatory fees; and adopts the proposal to discontinue the presumption that broadcast stations that are dark or were recently dark or bankrupt are experiencing financial hardship sufficient to justify waiver of their regulatory fees. The end of the dark station presumption will apply for FY 2025 regulatory fees. For FY 2024 regulatory fees, § 1.1910 of the Commission's rules will apply in full. In addition, pursuant to § 1.1166 of the Commission's rules, regulatory fee payors filing requests for waiver, reduction, deferral, and/or installment payment of regulatory fees must provide all financial documentation to support the request at the time of filing the request. Finally, to assist with a significant increase from the FY 2023 fees, particularly for earth station and NGSO space station fee payors, we direct the Office of Managing Director to

provide the lowest interest rate permitted by statute and forgo its customary down payment requirement when FY 2024 regulatory fee debt is paid under an installment payment plan.

The Commission will seek further comment on the remaining proposals made in the *Space and Earth Station Regulatory Fees NPRM* (89 FR 20582, March 25, 2024) that were not adopted in the recent *Space Station Regulatory Fees Order* (89 FR 60572, July 26, 2024) and the suggestions made by commenters in connection with these proposals. Those proposals include assessing regulatory fees on authorized, but not operational, space and earth stations; using an alternative methodology for assessing space station regulatory fees; establishing tiers within existing NGSO space station fee categories based on the number of space stations in the system; and creating new categories of earth station regulatory fees. The Commission expects to take action on these remaining proposals in time for them to be effective for FY 2025.

Background

Pursuant to sections 9 and 9A of the Act and the Commission's FY 2024 appropriations, we are required to collect \$390,192,000 in regulatory fees for FY 2024. Regulatory fees recover all of the Commission's non-auctions costs, including direct costs, such as salaries and expenses; indirect costs, such as overhead functions; statutorily required tasks that do not directly equate with oversight and regulation of a particular regulatory fee payor but instead benefit the Commission and the industry as a whole; and support costs, such as rent, utilities, and equipment. Regulatory fees must recover the total amount of the annual appropriation; *i.e.*, they must also recover the Commission's costs incurred in oversight and regulation of entities that do not pay regulatory fees, including those that are statutorily exempt from paying regulatory fees (governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations), entities that are exempt from payment of regulatory fees because their total assessed annual regulatory fees fall below the annual *de minimis* threshold, and entities whose regulatory fees are waived.

Regulatory Fees Calculation Methodology

Congress prescribed a method of collecting an amount equal to the full S&E appropriation by keying the regulatory fee assessment to our FTE

burden. Specifically, the methodology for assessing regulatory fees must "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." Given the Act's explicit language that fees must reflect FTEs, the Commission has long concluded that FTE counts are the most administrable starting point for regulatory fee allocations. The Commission hews closely to the statutory command to start with FTE counts and then potentially adjust fees to reflect other factors related to the benefit of Commission regulation and oversight. It is also noted that regulatory fees are a zero-sum game, because the Commission must collect the full amount of its appropriation each fiscal year. Thus, any decrease to the fees paid by one category of regulatory fee payors necessitates an increase in fees paid by other categories of regulatory fee payors. Therefore, the amount assigned to be recovered from each regulatory fee category relates to the FTE burden associated with oversight and regulation of those fee payors by the relevant core bureaus. The Commission assigns direct FTEs within a bureau to specific fee categories in a manner that reflects the time spent by FTEs on oversight and regulation of a particular set of fee payors, which is the "benefit" to such payors in each fee category. Thus, the Commission apportions regulatory fees across fee categories based on the number of direct FTEs in each core bureau to take into account factors that are reasonably related to the payor's benefits. We allocate appropriated amounts to be recovered proportionally based on the number of direct FTEs within each core bureau; this is subdivided within each core bureau into fee categories among the regulatees served by the core bureau; and then divided by a unit that allocates the regulatory fee payor's proportionate share based on an objective measure. If work performed by a group is directly related to our oversight and regulation of a regulatory fee category in one of the core licensing bureaus, then such FTEs are direct FTEs.

For the annual regulatory fee calculations, the Commission first determines the number of direct FTEs, *i.e.*, non-auctions FTEs that work in each of the Commission's core bureaus (*i.e.*, the Wireless Telecommunications Bureau, the Media Bureau, the Wireline Competition Bureau, the Office of International Affairs, and the Space

Bureau). Regulatory fees are initially apportioned across the regulatory fee categories based on the number of direct FTEs in each core bureau whose time is focused on a particular industry segment and then is adjusted "to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." The Commission receives FTE data from its Human Resources Management office and identifies FTEs at the core bureau level (*i.e.*, direct FTEs) to determine the FTE allocations for the core bureaus. The Commission also consults with the bureaus and offices to ascertain if FTEs previously deemed direct for a bureau or office should continue for the next fiscal year and this FTE data is then apportioned to the various fee categories within each core bureau based on FTE time spent on each fee category and is used to calculate the percentage of the total amount of regulatory fees to be collected for a given fiscal year from each core bureau. Those proportions are then subdivided within each core bureau into fee categories among the regulatees served by the core bureau. Finally, within each regulatory fee category the amount to be collected (fee category proportional percentage multiplied by the revenue target goal) is divided by a unit that allocates the regulatory fee payor's share based on an objective measure.

Regulatory fees must cover the Commission's entire appropriation, and this includes Commission work on issues for which we do not have regulatory fee categories. Therefore, we continue to find that, consistent with section 9 of the Act, regulatory fees are not based on a precise allocation of specific employees with certain work assignments each year and instead are based on a higher-level approach. Indirect FTE time covers a wide range of issues that may also include services that are not specifically correlated with one core bureau, let alone one specific category of regulatory fee payors. Indirect FTE work also includes matters that are not specific to any regulatory fee category, and many Commission attorneys, engineers, analysts, and other staff work on a variety of issues during a single fiscal year. For example, indirect FTEs that devote time to broadband internet access services or Universal Service Fund issues may also work on a variety of other issues during the fiscal year. Further, much of the work that could be assigned to a single category of regulatory fee payors is likely to be interspersed with the work that FTEs do on behalf of many entities

that do not pay regulatory fees, *e.g.*, those that are statutorily exempt from paying regulatory fees (governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations), entities that are exempt from payment of regulatory fees because their total assessed annual regulatory fees fall below the annual de minimis threshold, and entities whose regulatory fees are waived.

There must be a very strong rationale for changing the manner of proportionally allocating indirect FTEs to certain fee categories based on direct FTEs because any such changes will impact the fees of other regulatory fee categories. Any decrease to the fees paid by one category of regulatory fee payors necessitates an increase in fees for others. Thus, we affirm that (other than for the reassignments discussed below) the non-auctions FTE work in certain non-core bureaus and offices within the Commission are properly designated as indirect. Last year the Commission was able to determine with reasonable accuracy for the fiscal year that in some cases the indirect FTE work was directly related to the oversight and regulation of regulatory fee payors in a core bureau such that it should be considered as direct to that core bureau for calculating regulatory fees. After close analysis, the Commission reallocated 63 indirect FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau as direct FTEs to core bureaus, for FY 2023. In addition, the Commission reallocated two direct FTEs from the Media Bureau as indirect FTEs because the nature of their work was sufficiently linked to work that is similar to work performed in the Enforcement Bureau, a non-core bureau. In analyzing the FTE work, we applied conservative estimates and rounded down to the nearest whole FTE for such reallocations. As we discuss below, we are applying the same analysis this year, with similar reallocations of some indirect FTEs to core bureaus as direct FTEs.

Adjustments and Amendments to the Regulatory Fee Schedule

Each year, in the annual regulatory fee proceeding, the Commission proposes adjustments to the fee schedule under section 9(c) of the Act to “(A) reflect unexpected increases or decreases in the number of units subject to the payment of such fees; and (B) result in the collection of the amount required” by the Commission’s annual appropriation. Pursuant to section 9A(b)(1) of the Act, the Commission must notify Congress immediately upon adoption of any

adjustment. Annual regulatory fees typically change each fiscal year as a consequence of the changes in the total amount to be collected, the number of Commission direct FTEs, and the unit estimates for each regulatory fee category. In addition, in considering other additions or deletions to the regulatory fee schedule, the Commission’s focus is on direct FTE cost burdens related to the regulatory fee category at issue.

The Commission will also propose amendments to the fee schedule under section 9(d) of the Act “if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided section 9A(b)(2) of the Act, the Commission must notify Congress at least 90 days prior to making effective any amendments to the regulatory fee schedule. The Commission considers a section 9(d) amendment, such as the adoption of a new regulatory fee category or a change in methodology for an existing regulatory fee category only after developing a sufficient basis for making the change, and works to ensure that all changes ensure that our assessment of regulatory fees is fair, administrable, and sustainable.

The Commission has adopted new regulatory fee categories and new methodologies for calculating regulatory fees when there is a sufficient basis for doing so under the relevant statutory provisions and precedent, and based on the record. In 2020, for example, the Commission included non-U.S. licensed space stations with U.S. market access grants in the existing “Space Stations” fee category. The Commission concluded that assessing the same regulatory fees on non-U.S. licensed space stations with U.S. market access as assessed on U.S. licensed space stations would better reflect the benefits received by these operators, *i.e.*, the adjudicatory, enforcement, regulatory, and international coordination activities by the Commission’s FTEs in the International Bureau. More recently, the Commission adopted a new methodology for calculating small satellite regulatory fees in the *Space Station Regulatory Fees Order*, and we are using that methodology for FY 2024.

Report and Order

In the *Report and Order*, the Commission adopts a schedule of regulatory fees, as set forth in tables 3 and 4, to collect \$390,192,000 in congressionally required regulatory fees

for FY 2024 by the end of September. The Commission also implements the same methodology we have used historically for allocating FTEs and the new methodology adopted in the *Space Station Regulatory Fees Order* for determining regulatory fees for small satellites. The Report and Order adopts the proposal from the *Space and Earth Station Regulatory Fees NPRM* to revise the allocation of the share of Space Bureau regulatory fees among earth and space stations and the GSO/NGSO regulatory fees allocation, as well as to maintain the current allocation between “less complex” and “other” NGSO space stations fee categories. The *Report and Order* also adopts the proposals, as modified herein, in our *FY 2024 NPRM*, and reallocates 61 indirect FTEs as direct to certain Commission core licensing bureaus. Additionally, we adopt our proposal for the calculation of television broadcaster regulatory fees for FY 2024 and, effective for FY 2025, we discontinue the presumption that broadcast stations that are dark or were recently dark or bankrupt are experiencing financial hardship sufficient to justify waiver of their regulatory fees. We also provide notice that for FY 2024 we will offer some but not all of the limited remaining temporary relief previously offered in response to the COVID–19 pandemic; that is, the Office of Managing Director will continue assessing the lowest interest rate permitted by statute and forgo the customary down payment for fee payors who are eligible for installment payment relief.

Methodology for Assessing Regulatory Fees and Reallocating FTEs

The three main factors in determining regulatory fees are the amount of the FY appropriation, direct FTE levels in core bureaus, and relevant unit measures for each regulatory fee category. Section 9 of the Act requires us to set regulatory fees to “reflect the full-time equivalent number of employees within the bureaus and offices of the Commission adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission’s activities.” With respect to determining the number of direct FTEs, the Commission takes into consideration any adjustments necessitated by changes in these factors from the prior fiscal year. Second, the Commission looks to the core bureaus within the Commission in order to identify the number of direct non-auction FTEs in each core bureau for purposes of the regulatory fee calculation. After we calculate the number of direct FTEs for each core

bureau, we can determine the percentage of the total amount of regulatory fees to be collected from each regulatory fee category within each core bureau. These proportional calculations allocate all Commission non-auction related costs across all regulatory fee categories.

In FY 2023, in addition to looking at the current allocation of direct FTEs within the core bureaus, the Commission analyzed the work of indirect FTEs in non-core bureaus and offices and, where the Commission could determine with reasonable accuracy that such work was spent on the regulation and oversight of a regulatory fee category, the Commission reallocated the burden of that work as direct to a core bureau, for regulatory fee purposes. As a result of such analysis for FY 2023, 63 indirect FTEs from the Office of General Counsel (OGC), the Office of Economics and Analytics (OEA), and the Public Safety and Homeland Security Bureau (PSHSB) were reallocated as direct FTEs to a core bureau, for regulatory fee purposes, based on the Commission's evaluation of the burden of their work. For FY 2024, we are adopting the same analysis of indirect FTEs.

In our *FY 2023 Report and Order* (88 FR 63694, September 15, 2023), we explained that FY 2024 would be the first year where we incorporate the Space Bureau and the Office of International Affairs into our analysis, even though the organizational changes became effective on April 13, 2013. Below we explain how changes in the FTE allocations impact our analysis. For FY 2024, we analyzed the work of PSHSB, OGC, and OEA FTEs to determine whether any of their indirect FTE work should be allocated as direct FTEs to a core bureau for regulatory fee

purposes, as we had done in FY 2023. As described in more detail below, 61 indirect FTEs (after two Media Bureau FTEs are assigned to the Enforcement Bureau because of the tasks that are performed by the two Media Bureau staff) are reallocated as direct FTEs to a core bureau for regulatory fee purposes, based on our evaluation of the burden of their work. We find that these proposed reallocations are consistent with section 9 of the Act, which requires us to base our methodology on the number of FTEs in calculating regulatory fees.

Reallocations, for Regulatory Fee Purposes, of Certain Indirect FTEs as Direct FTEs

For FY 2024, we reallocate 61 indirect FTEs from the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau and add those FTEs as direct to the relevant core bureaus, for regulatory fee purposes. Based upon our evaluation of indirect FTE time in the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau, we find that 63 indirect FTEs should be reallocated as direct FTEs because they devote their time to the oversight and regulation of regulatory fee payors. We will also continue to reallocate two direct FTEs from the Media Bureau as indirect because the nature of their work is sufficiently linked to work that is similar to that performed in the Enforcement Bureau, which has been categorized as indirect. As we explained in the *FY 2023 NPRM* (88 FR 36154, June 1, 2023), when we discuss FTEs, we are not referring to any particular employee at the Commission but rather to an amount of work performed

annually by a full time employee or employees. In analyzing the work, the Commission applied conservative estimates so as not to imply a false sense of precision in the proposed reallocation. Specifically, where the amount of work under consideration for reallocation of an indirect FTE was half an FTE or less, we rounded down and we only proposed our reallocations in full FTE increments. As we have discussed our analysis for the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau reallocations in the *FY 2023 Report and Order* and the *FY 2023 NPRM*, we are not repeating the analysis here.

Based on these reallocations, and after adjustments are made to these direct FTE counts to implement Commission precedent, we will collect approximately \$6.711 million (1.72%) in fees from the Office of International Affairs regulatory fee payors; \$41.204 million (10.56%) in fees from the Space Bureau regulatory fee payors; \$100.084 million (25.65%) in fees from Wireless Telecommunications Bureau regulatory fee payors; \$127.203 million (32.60%) in fees from Wireline Competition Bureau regulatory fee payors; and \$114.990 million (29.47%) in fees from Media Bureau regulatory fee payors. The reallocations for regulatory fee purposes will result in increasing the number of direct FTEs in core bureaus and increasing the percentage of FTEs in some of the bureaus. Our underlying methodology for calculating regulatory fees remains unchanged; our regulatory fee calculation continues to be consistent with section 9 of the Act, which requires us to base our methodology on the number of FTEs in calculating regulatory fees.

TABLE 1—FY 2024 FTE REALLOCATIONS

Core bureau/office	Total FY 2024 direct FTEs <i>without</i> reallocations	FY 2024 reallocations	Total FY 2024 direct FTEs <i>with</i> reallocations	FY 2024 percent of direct FTEs, after reallocation
Office of International Affairs	8	0	8	1.72
Space Bureau	48	+1 (1 from OEA)	49	10.56
Wireless Telecommunications Bureau	95	+24 (8 from OEA, 2 from OGC, and 14 from PSHSB).	119	25.65
Wireline Competition Bureau	128.25	+23 (13 from OEA, 1 from OGC, and 9 from PSHSB).	151.25	32.60
Media Bureau	125	+13 (7 from OEA, 1 from OGC, 7 from PSHSB, and –2 from EB).	138	29.47
Total	404.25	61	465.25	100

Space Bureau and Office of International Affairs

Among its responsibilities regarding satellite and space-based communications and activities, the Space Bureau leads complex policy analysis and rulemakings; authorizes satellite and earth station systems used for space-based services; streamlines regulatory processes; and fosters the efficient use of spectrum and orbital resources. The Space Bureau also serves as the Commission's focal point for coordination with other U.S. government agencies on matters of space policy and governance and collaborates with the Office of International Affairs for consultations with other countries, international and multi-lateral organizations, and foreign government officials that involve satellite and space policy matters.

The Space Bureau has three divisions that have the functions previously handled by the International Bureau's Satellite Division, the Satellite Licensing Division, the Satellite Programs and Policy Division, and the Earth Station Licensing Division. Pursuant to the procedure discussed in paragraph six, above, our Human Resources Management office has identified 54 FTEs in the Space Bureau for FY 2024; of these, 48 are categorized as direct FTEs and six are devoted to matters that do not provide oversight and regulation of any category of regulatory fee payors, and thus are indirect FTEs.

The indirect Space Bureau FTEs coordinate with the National Aeronautics and Space Administration (NASA), Federal Aviation Administration (FAA), National Oceanic and Atmospheric Administration (NOAA), and the State Department on space sustainability, planetary protections, and on space innovation. They assist the Office of Engineering and Technology in reviewing applications for experimental licenses for space-based activities. The Space Bureau works closely with the Office of International Affairs to help cover certain ITU World Radiocommunications Conference (WRC) agenda items. We conclude that six Space Bureau FTEs are appropriately considered indirect as such work does not focus on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, or the public as a whole, or in the case of work done on experimental licenses, is in furtherance of licenses that are not currently subject to a regulatory fee.

The Commission rejects Kinéis' argument that we should consider more of the Space Bureau direct FTEs as indirect for regulatory fee purposes in order to reduce the regulatory fees for space stations. We recognize that previously the International Bureau had only 28 direct FTEs (of which 20 worked on space and earth stations). As explained above, the Commission obtained FTE data from our Human Resources Management office and determined that for FY 2024, there are a total of 54 FTEs within the Space Bureau. After consultation with the Space Bureau and careful analysis, we have determined with reasonable accuracy for this fiscal year that 48 FTEs are direct FTEs and six are indirect FTEs, (and one indirect FTE is designated as direct), for a total of 49 direct FTEs in the Space Bureau. Of these 49 direct FTEs, nine are devoted to oversight and regulation of earth stations and 40 to space stations. This FTEs work directly relates to the oversight and regulation of regulatory fee payors in a core bureau such that it should be considered as direct. As such, it would not be consistent with our implementation of section 9 to reassign them as indirect in order to reduce the regulatory fees of the space and earth station regulatory fee payors.

Thus, for FY 2024, we have a total of 54 FTEs within the Space Bureau, 48 direct FTEs, six indirect FTEs, and one indirect FTE from OEA designated as direct, for a total of 49 direct FTEs, an increase from the 20 FTEs from FY 2023 working on Space and Earth Stations.

Space Stations and Earth Stations

There are two main categories of Space Bureau regulatory fee payors: earth and space stations. There is a single category of earth station payors—Earth Stations: Transmit/Receive & Transmit only. Space stations consist of those in geostationary satellite orbit (GSO) and those in non-geostationary satellite orbit (NGSO). There are four categories of space station regulatory fee payors: Space Stations (Geostationary Orbit); Space Stations (Non-Geostationary Orbit)—Less Complex; Space Stations (Non-Geostationary Orbit)—Other; and Space Station (Small Satellites). "Less Complex" NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS). "Small Satellites" are space stations licensed pursuant to the streamlined small satellite process contained in § 25.122 of the

Commission's rules. Since our fiscal year 2020 proceeding, non-U.S. licensed space stations granted market access to the United States through a Petition for Declaratory Ruling or through earth station licenses are subject to regulatory fees.

The units of assessment for GSO and NGSO space station regulatory fee categories differ in that the fee for GSO space stations is assessed per satellite in geostationary orbit, whereas the fee assessed for NGSO systems, either "less complex" or "other," is per system of satellites, with no limit on the number of satellites per system. Fees for small satellites are assessed per license/call sign, which can include up to 10 satellites or spacecraft. The unit of regulatory fees for GSO space stations is a single satellite, whereas the unit of regulatory fees for NGSO space stations can include many satellites. Thus, although the single highest regulatory fee for space stations is for Space Stations (Non-Geostationary Orbit)—Other, this fee reflects the regulatory burden associated with the licensing and oversight of numerous space stations in the system, usually subject to processing rounds, complex spectrum sharing arrangements, and providing global coverage. By contrast, the per unit fee for Space Stations (Geostationary Orbit) is lower, but an operator providing global coverage may be paying regulatory fees on multiple GSO space stations, which could result in annual regulatory fee payments by a single fee payor in aggregate far greater than the regulatory fee for Space Stations (Non-Geostationary Orbit)—Other providing similar services and coverage.

Small Satellites and RPO, OOS, and OTV Regulatory Fees

In 2019, the Commission adopted a new, optional licensing process for small satellites and spacecraft and a small satellite regulatory fee category for licensed and operational space stations authorized under the process adopted in that proceeding. This process enabled qualified applicants to choose a streamlined licensing procedure resulting in an easier application process, a lower application fee, and a shorter timeline for review.

In our recent *Space Station Regulatory Fees Order*, the Commission adopted the proposal to set the regulatory fee for small satellites for FY 2024 at the level set for FY 2023, *i.e.*, \$12,215, with future annual adjustments to reflect the percentage change in the Commission's annual appropriation, unit count, and FTE allocation percentage from the previous fiscal year.

The Commission stated that changes to the methodology for assessing fees for small satellites would be implemented as part of the order adopting FCC-wide regulatory fees for FY 2024.

Accordingly, we are assessing the small satellite fee for FY 2024 at \$12,215.

The *Space Station Regulatory Fees Order* also adopted the proposal to assess regulatory fees, effective for FY 2024, on spacecraft primarily performing Rendezvous and Proximity Operations (RPO) and On-Orbit Servicing (OOS) by including them in the existing regulatory fee category “Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites),” on an interim basis, regardless of the orbit in which they are designed to operate. It also concluded that it is appropriate to assess regulatory fees on Orbital Transfer Vehicles (OTV) on an interim basis in the same manner, and stated that the changes to the methodology for assessing fees for RPO, OOS, and OTV space stations would be implemented as part of the order adopting FCC-wide regulatory fees for FY 2024. Accordingly, we will assess regulatory fees on RPO, OOS, and OTV space stations for FY 2024 using the regulatory fee category for small satellites, if such stations are required to pay regulatory fees for FY 2024.

GSO and NGSO Space Stations Allocation

Under an allocation adopted in 2020, 80% of space station regulatory fees are allocated to GSO space station fee payors and 20% of the space station regulatory fees to NGSO space station fee payors respectively. The Commission now adopts the proposal in the *Space and Earth Station Regulatory Fees NPRM* to change the allocation of space station regulatory fees from 80% of space station regulatory fees being allocated to GSO space station fee payors and 20% of the space station regulatory fees being allocated to NGSO space station fee payors to 60% of space station regulatory fees being allocated to GSO space station payors and 40% to NGSO space station payors (that is, changing from an “80/20 GSO/NGSO split” to a “60/40 GSO/NGSO split”). The new allocation is supported by many comments, particularly from GSO space station fee payors. We recognize that this will result in increases to fees for NGSO systems; however, we conclude that this is consistent with section 9 of the Act because this change more accurately reflects the apportionment of current FTE work between these two categories of regulatory fee payors since the

Commission last assessed the allocation in 2020.

As explained the *Space and Earth Station Regulatory Fees NPRM*, this change in the FTE allocation between GSO and NGSO fee categories is not based on a new methodology, but rather application of the existing methodology analyzing data from the previous three fiscal years. Specifically, the proposal focused on three factors that the Commission’s previously had found to be reflective of licensing and regulatory oversight of GSO and NGSO operators: the number of applications processed, the number of changes made to the Commission’s rules, and FTEs devoted to oversight of each category of operators. Analyzing this data, the *Space and Earth Station Regulatory Fees NPRM* tentatively concluded that a greater allocation of regulatory fees to NGSO space stations than was adopted by the Commission in 2020 more accurately reflects the benefits of the Commission’s oversight and regulatory efforts for GSO and NGSO space stations for FY 2024. After reviewing the proposal and the record in response to the proposal, we find no significant error in the input data or the conclusions drawn from the data. Accordingly, we adopt the proposed updated allocation of 60% of space station regulatory fees being assessed to GSO space stations and 40% to NGSO space stations.

We disagree with the NGSO space station operators that dispute the accuracy of the input data or the conclusions drawn from the data. Specifically, SpaceX argues that the increased FTE burdens associated with NGSO space station regulation result from the opposition of GSO space stations to applications for NGSO space stations, and that the methodology does not take into account purportedly smaller amount of FTE resources needed to process amendments to NGSO space station applications or modifications of NGSO space station authorizations that do not increase interference or orbital debris risk. Other commenters argue that the Commission should not base its regulatory fee allocations on historical events, *i.e.*, proceedings during the past three fiscal years, particularly transitory activities that have been completed and that the Commission’s methodology focuses too much on licensing and regulation costs but does not sufficiently consider the benefits received as a result of the Commission’s activities. We find, however, that these concerns do not undermine an adoption of an updated allocation between GSO and NGSO categories because these commenters

fail to consider that the methodology we use here represents our analysis of the FTE time split on these categories and is the same methodology as was used in 2020 to establish the existing 80/20 allocation that they support.

Furthermore, as the Commission has repeatedly acknowledged, attributing a value to proceedings is not an exercise in scientific precision, but rather an exercise in reasonable analysis.

We are also unconvinced that amendments to NGSO space station applications or modifications of NGSO space station authorizations do not raise interference or orbital debris risks, and therefore require less FTE burdens to authorize. Moreover, we reject the concept that comments or oppositions filed by GSO space station operators in response to NGSO space station filings support attributing those NGSO space station filings to the GSO share of space station regulatory fees. The underlying application is for an NGSO system. Parsing comments filed, or for that matter, issues raised by Commission staff in the Space Bureau or other core bureaus to determine if they might be attributed to other regulatory fee payors is not practicable or advisable in this context. The filing of comments or oppositions is a direct consequence of the filing and review of NGSO space station applications. Thus it is reasonably attributable to the NGSO share of the space station regulatory fees. We conclude, that all of these factors validates that the GSO/NGSO ratio should be adjusted to reflect that GSO space stations derive roughly 60% of the benefit from the Commission’s regulatory efforts and NGSO space stations derive roughly 40%. Finally, we observe that the Commission has repeatedly stated that “Section 9 is clear . . . that regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.” We affirm that it is appropriate under section 9 of the Act for the methodology used to determine the allocation of space station regulatory fees between GSO and NGSO space station fee categories to focus exclusively on the FTE burdens associated with each category.

The Commission therefore adopts this changed allocation of space station regulatory fees between GSO and NGSO space stations to become effective for FY 2024. Because the change in FTE burdens is not the result of new fee categories or a different methodology, it is not an amendment that requires 90-day notice to Congress under section 9A(b)(2) of the Act before becoming effective. Given that the change is a result of our current evaluation of the

FTE burdens between the two categories of space stations, we find it is appropriate to adopt the change now rather than to adopt it to be effective in a future fiscal year. Accordingly, this change is effective for FY 2024.

Allocation Between NGSO—Other and NGSO—Less Complex

The Commission adopts the proposal in the *Space and Earth Station Regulatory Fees NPRM* to maintain the existing allocation of the regulatory fee burden between “Space Stations (Non-Geostationary Orbit)—Less Complex” and “Space Stations (Non-Geostationary Orbit)—Other” for FY 2024. That is, we maintain the existing allocation of allocating 20% of NGSO space station regulatory fees to “Space Stations (Non-Geostationary Orbit)—Less Complex” and 80% to “Space Stations (Non-Geostationary Orbit)—Other” fee payors. The record supports our tentative conclusion in the *Space and Earth Station Regulatory Fees NPRM* that there have not been any significant changes to the amount of FTE burdens allocated between these two fee categories since the “20/80” split of regulatory fees between NGSO “less complex” and NGSO “other” subcategories was adopted in 2021.

In reaching the tentative conclusion, we utilized the same methodology that was used in 2021 to adopt the existing 20/80 split between Less Complex and Other NGSO space station payors. Specifically, we considered the number of applications processed, the number of changes made to the Commission’s rules, and the number of FTEs working on oversight for each category of operators. This methodology is the same as used for determining the allocation of regulatory fees among GSO and NGSO space station fee payors. In evaluating the FTE time devoted to the “less complex” and “other” subcategories, we considered the adjudicatory role of the Commission in connection with different types of NGSO systems, which is typically more intensive for those systems authorized as part of processing rounds. The Commission also considered the number of rulemakings over the last three fiscal years, as well as current rulemakings, and which types of NGSO systems are implicated in those rulemaking activities. Applying this methodology, we tentatively concluded that that more FTE time is spent on the NGSO “other” subcategory than on the NGSO “less complex” subcategory, and that the relative regulatory burden of “less complex” space station remains consistent with the existing 20% allocation.

The only party to comment on the tentative conclusion to preserve the 20/80 split supports its adoption. We see no errors in our tentative conclusion and affirm the findings that support maintaining the existing allocation of allocating 20% of NGSO space station regulatory fees to “less complex” and 80% to “Other” fee payors and, therefore, adopt the allocation for FY 2024. Maintaining the 20/80 allocation utilizes the same methodology that was used to establish it in 2021 and is not an amendment that requires 90-day notice to Congress under section 9A(b)(2) of the Act before becoming effective. Accordingly, our decision to maintain the existing 20/80 split between less complex and other NGSO space station fee payors is effective for FY 2024.

Earth Station Regulatory Fees

Earth station regulatory fees are assessed “per license or registration,” and each license or registration may include a single earth station, or multiple earth stations. The starting point for calculation of regulatory fees for space and earth stations is the number of direct FTEs in the Space Bureau. For FY 2024, we have a total of 54 FTEs within the Space Bureau, 48 direct FTEs, six indirect FTEs, and one indirect FTEs designated as direct, for a total of 49 direct FTEs. Of these 49 direct FTEs, nine are devoted to oversight and regulation of earth stations and 40 are focused on space stations. As a result, the percentage of FTEs working on earth station tasks is nine out of 49, or 18.37% (\$7,569,225). We adopt our tentative conclusion to apportion regulatory fees between earth and space station payors based on the percentage of direct FTEs involved in the licensing and regulation of each category. With a projected unit count of 2,900, the FY 2024 earth station fee is calculated to be \$2,610 per earth station license or authorization. Although this is a significant increase from the FY 2023, most comments support the increase as being reflective of the actual allocation of FTE resources between space and earth station categories in the Space Bureau. We decline to adopt the proposal of commenters to allocate an even greater share of FTE resources to earth stations, up to 30%. Our analysis above of the direct FTE resources attributable to licensing and regulation of earth stations supports an allocation of 18.37%.

The Commission also declines to adopt additional regulatory fee categories for earth stations at this time. The *Space and Earth Station Regulatory Fees NPRM* asked whether the

Commission should revisit the question of whether to create subcategories of earth station regulatory fee payors, in addition to the existing single category of “Transmit/Receive & Transmit Only (per authorization or registration).” Comments in response express doubt that the creation of subcategories of earth stations with differing fee amounts is feasible, and urge that the record be further developed before creating subcategories of earth station regulatory fees. Other commenters argue that transmit/receive earth stations, particularly those used by broadcasters, should be subject to significantly lower regulatory fees than other types of earth stations, such mobile-satellite earth stations. We conclude that the record is not sufficiently developed at this time to adopt additional regulatory fee categories for earth stations. Instead, we will seek additional comment regarding the creation of additional earth station regulatory fee categories, as part of a future further notice of proposed rulemaking (*FNPRM*).

Changing the Title of § 1.1156

We adopt the proposal in the *Space and Earth Station Regulatory Fees NPRM* to change the title of § 1.1156 in part 1, subpart G, of our rules to make it clear that it contains space and earth station regulatory fees in addition to regulatory fees for international services. Currently, space and earth station regulatory fees are contained in § 1.1156, which is titled “Schedule of regulatory fees for international services.” We adopt the proposal to rename this section as “Schedule of regulatory fees for space and international services” to reflect more accurately that the section contains the regulatory fees for space and earth stations, as well as the fees for international bearer circuits and submarine cables regulated by the Office of International Affairs. No party in the proceeding commented on or opposed the proposal.

We make this change because, after the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs in 2023, the current title can cause confusion by suggesting that only the fees for regulatory fee payors of the Office of International Affairs are contained within § 1.1156. We also conclude that it is easier to change the title of § 1.1156 than to create a new section in part 1, subpart G, containing space and earth station regulatory fees.

Other Proposals

At this time, we take no action on other proposals made in the *Space and*

Earth Station Regulatory Fees NPRM that have not already been adopted, either herein or in the *Space Station Regulatory Fees Order*. We conclude that action on these issues may benefit from further consideration. The Commission will seek further comment on these remaining proposals in the near future in a *FNPRM*. We expect to act on the remaining proposals in time to be effective for FY 2025.

In addition, in the *Space and Earth Station Regulatory Fees NPRM*, we sought comment on how the Commission's open proceeding on advancing opportunities for innovation in the new space age by taking measures to expedite the application processes for space stations and earth stations and Transparency Initiative might inform our consideration of the regulatory fee issues raised therein. In response, SpaceX observes that initial reforms over the last year were an important step in the right direction that ultimately will reduce FTE burden and associated fees for regulatees. It adds that "additional pending reforms—such as more flexible modification rules, overall shot clocks, and database assisted light-licensing to facilitate inter-service sharing—will dramatically reduce the number of applications that staff must process in the first place and promote more efficient review of applications that require staff attention." We will consider these observations in the context of our continued efforts to streamline the application processes for space and earth stations in order to allow greater efficiencies in FTE resources utilized to license and regulate space and earth stations.

Office of International Affairs

The Office of International Affairs is responsible for the Commission's engagement of foreign and international regulatory authorities, including multilateral and regional organizations. This office also facilitates the Commission's development of policies regarding international telecommunications facilities and services, including submarine cables, and advises and makes recommendations to the Commission on foreign ownership issues. The Office of International Affairs implements Commission policies to facilitate competition and foreign investment in U.S. international telecommunications markets while ensuring, in consultation with relevant Federal partners, that national security, law enforcement, foreign policy, and trade policy concerns are addressed. This office is also responsible for intergovernmental

leadership, and negotiation and international and inter-agency representational functions. This office oversees and coordinates the Commission's global participation in international and multilateral conferences, regional organizations, cross-border negotiations and international standard setting efforts, and oversees bilateral meetings with other countries and foreign government officials. The Office of International Affairs is composed of the Global Strategies and Negotiation Division and the Telecommunications and Analysis Division. Among other things, the Global Strategies and Negotiation Division staff represent the Commission in international conferences, meetings, and negotiations, and manage Commission participation in the fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute (USTTI) as well as the Commission's International Visitors Program. Most of the work of the office, including the work of the Global Strategies and Negotiation Division, does not benefit a specific fee payor, but rather the government as whole, and is therefore appropriately categorized as indirect.

Telecommunications and Analysis Division. The Telecommunications and Analysis Division develops international telecommunications policy, authorizes international telecommunications facilities and services under section 214 of the Act, issues submarine cable landing licenses under the Cable Landing License Act of 1921 and Executive Order 10530, and provides expertise on foreign ownership issues pursuant to section 310 of the Act. In performing its functions, the division coordinates international applications and petitions involving foreign ownership with the relevant Executive Branch agencies for any national security, law enforcement, foreign policy, or trade policy concerns. The division also provides guidance to and shares its expertise within the Commission and with other U.S. agencies.

Calculating regulatory fees for IBCs. IBCs consist of terrestrial and satellite circuits and submarine cable systems. In the *FY 2020 NPRM* (85 FR 32256, May 28, 2020), we concluded, based on a review by the International Bureau, that eight FTEs should be allocated to IBCs for regulatory fee purposes, with the remaining 20 direct FTEs in the International Bureau allocated to the satellite category. Currently, in the *Office of International Affairs*, as stated in the *FY 2024 NPRM*, we find that there

are eight FTEs within the Telecommunications and Analysis Division that work on IBC related issues, including the services provided over submarine cables, and their time can be appropriately categorized as direct in furtherance of the oversight and regulation of specific regulatory fee payors. Thus, we have the same number of direct FTEs devoted to IBC issues now as in FY 2023, when the Telecommunications and Analysis Division was in the International Bureau. The Commission therefore concludes, for FY 2024, that of the 47 FTEs within the Office of International Affairs, eight are direct FTEs and 39 are indirect FTEs.

Broadcast Television Stations

In the *FY 2020 Report and Order* (85 FR 59864, September 23, 2020), we completed the transition to a population-based full-service broadcast television regulatory fee. For FY 2024, the Commission will continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast television station's contour and we will use the results of the 2020 U.S. Census. As a result, there will be no need to make any population adjustments to account for reductions in the population since 2010. However, the Commission will continue to base assessments on limiting the population count of full-power television stations that rely on satellite television stations to reach terrain-limited areas in Puerto Rico. We are adopting a factor of \$.006598 per population served for FY 2024 full-power broadcast television station fees. The population data for broadcasters' service areas are determined using the TVStudy software and the LMS database, based on a station's projected noise-limited service contour. The population data for each licensee and the population-based fee (population multiplied by \$.006598) for each full-power broadcast television station is listed in table 8.

Proposed New Regulatory Fee Categories

The State Broadcasters proposed that the Commission adopt new regulatory fee categories for broadband internet access service providers and manufacturers of equipment that uses spectrum on an unlicensed basis. For the reasons set forth below, we are not adopting such new fee categories at this time.

Broadband Internet Access Service Providers

We are unconvinced by the State Broadcasters' argument that we should create a new regulatory fee category for broadband internet access service providers at this time. As an initial matter, we note that there is no specific bureau or office in the Commission with oversight of all broadband services, because such activities are spread out among all core bureaus, and broadband issues are a part of many Commission initiatives and proceedings. We are unconvinced that a broadband internet access service provider regulatory fee category is necessary or that such a category appropriately belongs in any one bureau. As we have discussed earlier, broadband internet access services are offered through various technical means and by widely differing entities and to distinct user groups, *e.g.*, wireless service providers, wireline service providers (including VoIP), cable operators, and satellite operators, to consumers and businesses, on both a retail and a wholesale basis. This service is not only offered by different types of providers, but is also delivered to end users in different ways. As we observed in the *FY 2022 Report and Order* (87 FR 56494, September 14, 2022) commenters have not shown that a particular group of FTEs within the Commission is providing oversight and regulation for broadband internet access services and that other parties (besides these broadband internet access service providers) are responsible for all of the regulatory fees associated with those FTEs. It appears that the contrary is true: broadband internet access services are involved in many Commission initiatives and proceedings. Such services are in many cases offered by service providers regulated by all the core bureaus and already responsible for regulatory fees. Creating a new regulatory fee category for broadband internet access services appears to be redundant with existing fee categories in the case of those broadband internet access service providers that otherwise already were subject to the existing fee categories, and thus a new fee category in this regard is not administrable at this time.

The State Broadcasters contend that broadening the base of regulatory fee payors to include broadband internet access service providers would ensure a more fair and sustainable regulatory fee system. However, they have not established a sufficient basis for the creation of such a category and that a broadband internet access service providers regulatory fee category, if

adopted, would be fair, administrable, or sustainable for the reasons elaborated above. We also note that because the amount collected from each core bureau is based on the number of non-auctions FTEs in each bureau, adding a new broadband internet access fee category or categories would be unlikely to change the number of Media Bureau FTEs devoted to broadcast issues. Moreover, as indicated above, broadband internet access services are a part of many Commission initiatives and proceedings and such services are offered by service providers regulated by all the core bureaus (and these providers often already otherwise pay regulatory fees on their regulated services). For these reasons, particularly due to the lack of information in the record to support the need for adoption of such a new regulatory fee category, the Commission is not adopting a new fee category for broadband internet access service providers at this time. We find that section 9 of the Act does not require creation of this category and commenters have not shown, on the basis of the record in this proceeding, that such a category would satisfy the factors that the Commission has relied on when it has found a basis to create a new regulatory fee category.

Manufacturers of Equipment That Operates on Spectrum on an Unlicensed Basis

We also decline to adopt the State Broadcasters' proposal to adopt a new regulatory fee category for manufacturers of equipment that operates on spectrum on an unlicensed basis. The State Broadcasters have not provided a sufficient basis, consistent with section 9 of the Act, for the adoption of such a new regulatory fee category. The Commission has adopted new fee categories based in part on the benefits to the payor, *i.e.*, FTE work in oversight and regulation, on several occasions. In those instances, the Commission determined that significant FTE resources of a core bureau were being spent on oversight and regulatory activities with respect to a specific service necessitating a new regulatory fee category. Those circumstances, for equipment manufacturers, are not present here.

The Office of Engineering and Technology is responsible for oversight and regulation of spectrum used on an unlicensed basis, and the FTEs in that office are classified as indirect FTEs because the work in that office benefits the Commission and the industry as a whole and is not specifically focused on the regulatory fee payors and licensees of a core bureau. Even when we

consider only OET FTE time working on oversight and regulation of spectrum used on an unlicensed basis and equipment operating wholly or in part on such spectrum, the treatment of such costs as indirect is appropriate. This is true because many devices, including those operating wholly or in part on an unlicensed basis, are exempt from equipment authorization requirements. Moreover, devices that are not exempt are tested by third party labs and, if certification is required, applications are submitted to Telecommunications Certification Bodies. Other devices, generally those considered to have reduced potential to cause RF interference, are authorized pursuant to the Commission's SDoC process which provides for the equipment to be authorized based on the responsible party's self-declaration that the equipment complies with the pertinent Commission requirements. As such, the Office of Engineering and Technology oversight requires only a portion of FTE resources, appropriately part of indirect costs, as opposed to segregable direct costs. In addition, the Commission's current regulatory framework does not include an efficient way to identify equipment, specifically that which is exempt from authorization or authorized pursuant to SDoC procedures, that operate on an unlicensed (as opposed to licensed) basis and commenters have not suggested an efficient methodology to obtain this information.

On the basis of the record developed here, we find that the proposal for a new regulatory fee category for manufacturers of equipment that operates on spectrum on an unlicensed basis is not consistent with section 9 of the Communication Act. Equipment that operates on spectrum on an unlicensed basis is diverse in nature, ubiquitous, and used for many purposes including non-communications purposes. Thus it would be challenging to define and administer a regulatory fee category or categories of similarly situated entities. Nor does all or the majority of equipment that operates on spectrum on an unlicensed basis perform a specific service. Thus, focusing on the service provided would not provide a clear and administrable regulatory fee category. Moreover, this is not an area where time will distill down a clear group of users, service providers or manufacturers to form the core of a regulatory fee category. For example, if the Commission were to decide to assess fees on manufacturers of equipment used in the United States, numerous logistical concerns would be presented.

The Commission establishes rules for and administers the equipment authorization program to ensure that RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission's rules. However, under the current Commission equipment authorization regime, the Commission does not collect information from or communicate with all device manufacturers. As we explained above, many devices only require SDoC authorization or are exempt from authorization because they pose a limited potential of causing harmful interference. Similarly, if users of equipment that operates on spectrum on an unlicensed forms the core of the fee category. The Commission has no reasonable means by which to comprehensively identify each and every individual or entity that operates RF devices on an unlicensed basis. Accordingly, we find that a new regulatory fee category for manufacturers of equipment that operates on spectrum on an unlicensed basis, on the basis of the instant record, is not practicable at this time and we decline to adopt such a regulatory fee category at this time.

Digital Equity and Inclusion

In the *FY 2024 NPRM*, we sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority. We did not receive any comments on this issue.

Temporary Relief Measures Under §§ 1.1910, 1.1166, and 1.1914 of the Commission's Rules

In FYs 2020, 2021, and 2022, the Commission implemented temporary relief measures for fee payors experiencing financial hardship caused or exacerbated by the COVID-19 pandemic. In FY 2023, the Commission permanently codified two of the temporary measures in §§ 1.1166 and 1.1914 of the Commission's rules, simplifying and streamlining the process for all fee payors to obtain regulatory fee relief. The Commission also continued the remaining temporary relief measures in FY 2023, recognizing that while the National Emergency had ended, continuing the temporary measures in FY 2023 would assist regulatory fee payors, such as broadcasters, who might still be recovering from the economic impact of the pandemic. Specifically, the Commission found good cause to continue to offer a low interest rate and

not require the customary down payment for installment payment of regulatory fee debt. Moreover, the Commission directed the Office of Managing Director to continue to exercise its delegated authority to partially waive § 1.1910 of the Commission's rules to allow regulatees on "red light" and experiencing financial hardship to nonetheless request waiver, reduction, deferral, and/or installment payment of their FY 2023 regulatory fees, provided that those regulatees resolve all of the delinquent debt they owe to the Commission in advance of the Commission's decision on their requests for relief. We also partially waived § 1.1166 of our rules to permit fee payors seeking waiver, deferral or reduction of their FY 2023 regulatory fees to submit documentation supporting their requests after their underlying requests were submitted. However, we limited this partial waiver to allow only one post-filing submission by a deadline of January 31, 2023, in anticipation of a return to the normal operation of § 1.1166.

In the *FY 2024 NPRM*, we stated that we did not plan to implement any of the foregoing temporary relief measures in FY 2024 because the circumstances for which the temporary measures were implemented had changed, to wit, the National Emergency ended and the economy was continuing to rebound. While again recognizing that some regulatory fee payors might continue to experience financial difficulties related to the pandemic, we concluded that the changes we made to §§ 1.1166 and 1.1914 to simplify and streamline the process of obtaining regulatory fee relief offered those fee payors "a straightforward path to regulatory fee relief." We asked commenters that disagree with our proposal to explain why continuing the temporary measures is necessary or justified, and if continuation requires waiving a Commission rule, why good cause exists for and the public interest would be served by waiving the Commission rule.

The State Broadcasters and NAB each object to the Commission's proposal to discontinue the remaining three temporary measures. NAB advocates for codifying each of the temporary measures, citing the public's interest in the Commission continuing to enable "payors and the FCC's staff to craft appropriate relief and avoid costly collection processes and regulatory consequences for distressed payors." The State Broadcasters advocate for the Commission to continue indefinitely the Commission's partial waivers of the red light rule and § 1.1166. The State Broadcasters also propose that the

Commission continue partial waivers of the red light and § 1.1166 as temporary measures in FY 2024. The State Broadcasters contend that extending the Commission's partial waiver of the red light to permit fee payors on red light to nonetheless file relief requests is important to ensure that broadcasters in financial distress obtain the relief they seek and continue providing service to the public. The State Broadcasters argue that continuing a partial waiver of § 1.1166 to permit fee payors to submit financial documentation after they file their waiver requests is warranted because broadcasters may not understand what documentary proof must be provided to prove financial hardship and permitting supplementation will increase fee payors' likelihood of submitting sufficient documentary proof to prove financial hardship.

We disagree that continuing the partial red light waiver in FY 2024 is vital to ensure that broadcasters in financial distress are able to obtain relief and continue operating. Even if we were to continue the partial waiver in FY 2024, a broadcaster on red light would still be required to pay or otherwise resolve its debt to the Commission before the Commission would issue a decision on the broadcaster's waiver requests. Restoring the normal operation of the red light rule does not prevent a broadcaster from seeking fee relief for FY 2024, it only requires the fee payor to pay or otherwise resolve its delinquent debt before, rather than after, filing a request for fee relief.

To the extent the State Broadcasters also argue for a continuation of the Commission's partial waiver of § 1.1166 of our rules, we disagree that, as the State Broadcasters contend, the Commission's standard of proof for establishing financial hardship is unclear and that fee payors should therefore be permitted to supplement their submission of financial documents after submitting their requests until they are certain that they have met their burden of proof. The Commission's standard for establishing financial hardship sufficient to justify regulatory fee relief under § 1.1166 of the Commission's rules is clear, and has not changed since 1995, when the Commission first articulated it. Since then, the Commission has regularly reminded fee payors of the standard and also, listed financial document types that fee payors might submit to prove financial hardship.

To reiterate here, the standard for waiver, reduction and/or deferral of a regulatory fee in any specific instance under section 9A of the

Communications Act and § 1.1166 of the Commission's regulations is for good cause if the waiver, reduction, or deferral (collectively, waiver) would serve the public interest. We interpret this provision narrowly to permit only those waivers "unambiguously articulating 'extraordinary circumstances' outweighing the public interest in recouping the cost of the Commission's regulatory services for a particular regulatee." Within this standard, we recognize that in exceptional circumstances, financial hardship may justify waiving an individual party's regulatory fees, to wit, when the requesting party has shown it "lacks sufficient funds to pay the regulatory fees and to maintain its service to the public." Financial hardship, however, must be conclusively proven in each individual case; mere allegations of financial loss will not support a waiver request. Rather, each party seeking regulatory fee relief must fully document its financial condition to prove financial hardship. We have previously suggested and continue to suggest that documents that may be relevant to prove financial inability include balance sheets and profit and loss statements (audited if available), twelve month cash flow projections (with an explanation of how calculated), a list of officers and highest paid employees other than officers, and each individual's compensation, or similar information. However, the foregoing list of documents is not exhaustive. In other words, a fee payor seeking fee relief is in the best position to determine, and therefore must be the party responsible for determining, what financial documents demonstrate that the fee payor "lacks sufficient funds to pay the regulatory fees and to maintain its service to the public."

We therefore decline to continue the temporary measures in FY 2024, except as noted below. The measures were always intended to be temporary, to address the extraordinary circumstances of a world-wide pandemic. The circumstances for which the temporary measures were put in place in FY 2020 and continued in FYs 2021 through 2023 have changed, even more so since FY 2023. It has now been 18 months year since the National Emergency ended. Moreover, the national economy is very different than it was during the National Emergency. Commenters have not demonstrated that good cause exists and that it is in the public interest to continue the partial waivers in FY 2024, nor have commenters made a convincing case that any lingering financial difficulties related to the

COVID-19 pandemic that fee payors may be experiencing justify the Commission continuing to direct the Office of Managing Director to offer the lowest statutory interest rate and not require the customary down payment for installment payment of FY 2024 regulatory fee debt. For those reasons, we also decline to adopt NAB's and the State Broadcaster's proposal to codify or continue indefinitely the temporary measures.

Nonetheless, as explained below, we direct the Office of Managing Director to fix the interest rate it assesses on all installment payments of FY 2024 regulatory fee debt at the lowest rate permitted by statute, and to not require the customary down payment. As we discuss in the Final Rules section of the *Report and Order*, structural changes to the Commission and the creation of the Space Bureau have resulted in significant increases in the FY 2024 regulatory fees earth and space station regulatory fee payors must pay. We recognize that for FY 2024 some Space Bureau fee payors may have difficulty paying the increased fee in a single payment and that assessing the lowest permissible interest rate and not requiring the customary down payment will assist those payors who qualify for installment payment relief in meeting their FY 2024 regulatory fee obligation. These terms apply to all fee payors who qualify for installment payment of their FY 2024 regulatory fees.

With respect to operation of the red light under § 1.1910 of our rules, we will not direct the Office of Managing Director to partially waive § 1.1910 to permit regulatory fee payors on red light and experiencing financial hardship to request waiver, reduction, deferral and/or installment payment relief of their FY 2024 regulatory fees. Instead, the Commission will not act on and will dismiss a request for waiver, reduction, deferral and/or installment payment relief filed by a fee payor if the fee payor is on red light, in accordance with the requirements of § 1.1910.

Finally, we will not direct the Office of Managing Director to waive § 1.1166 of our rules to permit parties requesting regulatory fee relief on financial hardship grounds to submit financial documents supporting their request after the waiver request is filed. Thus, parties seeking waiver, reduction and/or deferral of their regulatory fees must submit with their requests the financial documents that demonstrate financial hardship. Documents submitted after a request is filed will not be considered and failure to submit any supporting financial documents with a request will

result in dismissal and/or denial of the request.

Non-Operating Broadcast Stations

In the *FY 2024 NPRM* we sought comment on our proposal to end a rarely used and never codified policy of granting regulatory fee waiver requests of stations that are or were recently silent and stations in their first year of operation recently purchased out of bankruptcy or recently silent, on the presumption that their silent or recently bankrupt status signifies financial hardship sufficient to waive their regulatory fees, without requiring submission of financial documents demonstrating actual financial hardship.

NAB and the State Broadcasters oppose our proposal to end the policy. The State Broadcasters argue that the facts underlying the policy's implementation have not changed, that no matter why a station goes dark, when it goes dark it experiences financial hardship that may cause it to cease operation altogether. NAB argues that the policy eliminates a financial burden to silent stations attempting to return to operating status and a barrier to potential investment in stations that were recently dark or bankrupt. Neither commenter however disputes nor addresses the Commission observation that the presumption underlying the policy is no longer accurate in FY 2024. As we noted in the *FY 2024 NPRM*, in today's marketplace, broadcast licensees often own multiple stations. Because the Commission considers all of a licensee's assets and revenue streams in determining its ability to pay regulatory fees, the silence of one of its stations does not necessarily affect the licensee's ability to pay the regulatory fees it owes, including for the silent station. Similarly, it is not accurate to assume that, across-the-board, newly purchased stations that were previously dark or bankrupt are insufficiently financed to cover the station's first year of operation. The station owner may very well have sufficient funds—other revenue streams or start-up financing to pay the station's regulatory fees in its first year of operation.

The Commission therefore concludes that the policy's underlying presumption is no longer broadly valid and that the policy should be eliminated. Accordingly, all broadcast licensees, regardless of station status, will be required to submit with their waiver requests sufficient financial documentation to demonstrate financial hardship in accordance with § 1.1166 of our rules. This change will apply to regulatory fees due in FY 2025 in order

to provide the affected broadcasters time to comply with this change in policy.

Capping or Phasing in Space and Earth Station Regulatory Fees

As we explained above, because the Commission must collect the full amount of the appropriation as an offsetting collection, decreasing the fee on any one category must be offset with an increased collection in another category. Thus, by requesting that the Commission cap or phase in the increases in regulatory fees for space and earth stations, the satellite and earth station industry is effectively requesting that the Commission shift fees from Space Bureau regulatory fee payors to other regulatory fee payors. As we explain below, the Commission declines to do so. We agree with commenters opposing the request that shifting fees to other regulatees, in this instance from Space Bureau regulatees, when such fees are properly based on direct FTEs in the Space Bureau, is not consistent with Congressional direction in section 9 of the Communications Act.

Several commenters suggest a cap or phased-in approach to implementing substantial fee increases, alleviating the immediate financial burden on satellite and earth station fee payors, and argue that imposing a cap and phase in of fee increases for FY 2024 and beyond would be consistent with the statutory requirements of section 9 of the Act. We are not convinced that, based on commenters' argument that the fee increase places a substantial and unforeseen financial burden on satellite operators, we should shift the fee burden to other regulatory fee payors. As Iridium observes, the entire industry will benefit from the additional resources made available to the new Space Bureau and the overall increases reflect the Commission's goal of advancing the space economy. Although we are mindful of the significant increase in regulatory fees for most space and earth station regulatory fee payors for FY 2024, these increases reflect a reasonable assessment of the FTE burdens associated with oversight and regulation of the Space Bureau categories of fee payors after the reorganization of the International Bureau into the Space Bureau and Office of International Affairs and the additional direct FTEs added to the Space Bureau.

The Submarine Cable Coalition favorably commented on the direct FTE allocations to OIA and the proposed regulatory fee rates for OIA regulatory fee payors that flow such direct FTE allocations. The Submarine Cable Coalition strongly opposes the request

to shift fees as contrary to the statute. The Submarine Cable Coalition stated that it should not be the burden of submarine cable operators, nor any one type of international licensee under OIA, to subsidize holders of other license types.

The Commission most recently addressed such a request to shift fees in the *FY 2019 Report and Order* (84 R 50890, September 26, 2019), and declined a request to freeze or phase in the space station regulatory fee increase. The Commission explained there why it hews so closely to the statutory command to start with FTE counts and then potentially adjust fees to reflect other factors related to the payor's benefits. In the *FY 2019 Report and Order*, the Commission noted that because the International Bureau had a relatively small number of direct FTEs, the increase in its percentage of the whole resulted in a non-trivial increase in fees for International Bureau regulatees. While the increased fees were unwelcome by the International Bureau regulatees, the Commission found that adoption of the fees without a phase in was consistent with the results when FTE counts have shifted.

Looking further back into our regulatory fee proceedings, commenters have observed that the Commission has previously phased in fee increases and capped annual percentage adjustments to avoid fee shock from large and unpredictable fluctuations. The two previous examples of caps or phase-ins are fundamentally different circumstances, *i.e.*, after the Commission updated FTE data or adopted a new methodology, which we explain below. Here the increases for FY 2024 are due to increased direct FTEs working on satellite and earth station matters. Thus, it is attributable solely to circumstances which were for the benefit of the earth station and satellite operators.

In 2012, in a report issued by the Government Accountability Office (GAO), GAO explained that the FCC continued to rely on the 1998 division of regulatory fees as the basis of its regulatory fee division through fiscal year 2011. The GAO Report explained that for 13 years, FCC had not validated the extent to which its division of fees among industry sectors and fee categories correlated with its current division of FTEs among industry sectors and fee categories. This failure to update the Commission's FTE analysis occurred when regulatory fees went from an offsetting collection representing 38 percent of the Commission's appropriation in 1994 to 100 percent of the appropriation starting in 2009. In

correcting this serious flaw in its methodology noted by the GAO Report, and as part of a larger effort of fee reform, the Commission as an interim measure did not immediately flash cut to the new FTE allocation. Instead, the Commission in 2013 imposed a cap on fee increases from FY 2012 to FY 2013. In the *FY 2013 NPRM*, (78 FR 34612, June 10, 2013) the Commission proposed to cap increases in regulatory fees in FY 2013 to no more than 7.5%, acknowledging that its existing FTE allocations were outdated and that revising the allocations based on FTEs, without other adjustments, would drastically change the amount of fees paid by various classes of regulatees. The Commission also observed that revision of FTE allocations required a transition period of more than one year, and that the allocations made for FY 2013 could be impacted by regulatory fee reform issues that could be resolved in future years. For this reason, the Commission viewed the 7.5% cap as an interim approach as it transitioned to a comprehensive revision of its regulatory fee program.

The current circumstances are significantly different from those presented in 2013. The Commission is not currently moving from a FTE allocation that is thirteen years out of date. The increase in direct FTEs associated with space and earth station fee payors for FY 2024 does not result from a fundamental revision of how direct FTEs are calculated FCC-wide. Rather, the increase results from a greater number of FTEs being associated with the regulation and oversight of such fee payors after the reorganization of the International Bureau, using existing methodology for calculating FTEs. Unlike the situation in 2013, there is no multi-year program of reform of FCC-wide regulatory fees that necessitates a cap as an interim approach for transitioning to a future comprehensive revision of the regulatory fee program. Consequentially, the factors that supported the imposition of a cap in 2013 are not present today. Therefore, we believe that correcting the extraordinary error on the Commission's part in applying a stale FTE count is not analogous to the current situation.

In another instance the Commission limited fee increases through a revenue cap in 1997 in order to avoid unexpected, substantial increases in regulatory fees. This was again during the period of time where Congress raised the offsetting collection of regulatory fees from 38 percent in 1994 to over 75 percent of the annual appropriation in 1997. Further, this cap

was also premised as being an interim step in a comprehensive FCC-wide revision of the regulatory fee program as the Commission transitioned to the use of employee time sheet entries to calculate direct and indirect FTEs. This premise is absent under the present circumstances.

Commenters also rely on a fee adopted for Direct Broadcast Satellite (DBS), initially as a subcategory of the cable television/internet Protocol Television (IPTV) fee category. Intelsat states that the Commission has modified its standard regulatory fee methodology to ensure that sudden and large increases, such as the one here, are mitigated in order to avoid harm to fee payors, such as phasing in of a new fee for DBS that was based on Media Bureau FTEs. In that instance, the Commission initially adopted the new fee category in 2015 and subsequently sought comment on the appropriate fee versus other members of the subcategory. Thus, each year, the agency sought and received comment on the issue. Furthermore, the only other categories of fee payors negatively affected by the phase in of DBS regulatory fee payments as part of the cable television/IPTV fee category were other cable and IPTV fee payors. No parties (other than DBS operators, because this was a new fee category) sustained a fee increase. The issue was where to set the regulatory fee rate for a new category within the Media Bureau between two sets of fee payors that benefited from the same pool of Media Bureau direct FTEs. Thus, the agency took a measured approach to discerning whether DBS should pay at the same rate as other members of the fee category, asking and seeking comment on the issue each year. This presents a different situation from the present circumstances. Moreover, in our *FY 2024 NPRM*, we did not propose a fee schedule that included a proportionate shifting of fees from the Space Bureau into one or several categories of fee payors. Thus we are concerned that the full monetary impact of this proposal, to cap or phase in satellite regulatory fees, was not factored into our specific proposed fees and affected parties might not be in a position to understand how the proposal would increase their fees. Accordingly, we conclude that assessing fees in a manner that does not fully collect the S&E appropriation for the fiscal year, or that is not keyed to the FTE burden found to be associated with each category of fee payors, would be inconsistent with the plain language of section 9 of the Act.

Several commenters urge the Commission to cap or phase-in the

increases in regulatory fees assessed for space and earth station fee payors for FY 2024, even if these increases result from a reasonable reassessment of the FY 2024 FTE burdens associated with oversight and regulation of space and earth station payors. Intelsat proposes that the Commission phase in this increase over time by applying a cap to the increase in indirect FTEs proportionally assigned to the Space Bureau at 1% for FY 2024 and 20% every year after until the Space Bureau's allocation has reached parity with the calculation under the Commission's current methodology (which would be approximately five years). According to Intelsat, reducing the share of indirect costs would mitigate harm to the satellite industry from increased regulatory fees. We disagree. A cap or phase in of fees, whether characterized as a reduction in indirect costs or otherwise, would impose additional regulatory fees on all other regulatory fee payors, who have not received the benefit of additional Space Bureau direct FTEs devoted to oversight and regulation of space stations. Intelsat has not explained how such a shift in costs from one group of fee payors to another would be consistent with section 9, other than to assert that we have the discretion to allocate indirect costs. We conclude, however, that such a cap or phase-in would be inconsistent with our statutory obligation to assess and collect regulatory fees for each fiscal year. Section 9 of the Act obligates the Commission to assess and collect regulatory fees each year in an amount that can reasonably be expected to equal the amount of its annual S&E appropriation. Thus, the Commission has no discretion regarding the total amount to be collected in any given fiscal year. Even assuming this proposal to cap or phase in the fees would help mitigate the large increase assessed to certain Space Bureau regulatory fee payors, it would create a disconnect between other fee payors' fees assessed using calculated FTE burden shares and those assessed using the proposed cap and phase in proposal. This disconnect is exacerbated by the fact that we did not propose to cap or phase in increases for space and earth station fee payors (and thus to increase or limit the decrease in fees assessed to other payors of regulatory fees) in our *FY 2024 NPRM*. Further, we find that adopting such a cap or phase in and shifting some of the fee increase to other fee payors would result in the same cross-subsidizing situation that GAO found problematic in 2012. Among other things, GAO observed that one potential

effect of cross subsidization is that, if entities in different fee categories are directly competing for the same customers, cross subsidization could result in competitively disadvantaging entities in one fee category over another.

Section 9 of the Act prescribes a method of collecting an amount equal to the full S&E appropriation by keying the regulatory fee assessment to the Commission's FTE burden. As a result, the fee assigned to each regulatory fee category relates to the FTE burden associated with oversight and regulation of each regulatory fee category by the relevant core bureaus. Section 9 does not provide any other basis for assessing regulatory fees or any basis for capping fees for a particular fiscal year, or phasing in increases in fees over several fiscal years, for a particular category or categories of fee payors.

Installment Payments

When the Commission adopted regulatory fees for FY 2023, it noted that it would be the last year for doing so for the International Bureau regulatory fee payors, and that the creation of the Space Bureau and Office of International Affairs could result in changes in the assessment of regulatory fees for future fiscal years. In March 2024, in the *Space and Earth Station Regulatory Fees NPRM*, the Commission stated its expectation that space and earth station payors would pay significantly more in regulatory fees in FY 2024 than in FY 2023 due to the reorganization of the International Bureau and the creation of the Space Bureau. The Commission subsequently in June 2024 proposed estimates of the regulatory fee rates for space and earth stations that reflected significant increases in regulatory fees for space and earth stations compared to FY 2023.

We recognize that the FY 2024 regulatory fees adopted here for earth and space stations represent a significant increase from the FY 2023 fees, particularly for earth station and NGSO space station fee payors, and may, for some payors, be more difficult to pay in a timely manner. The proposed regulatory fee increases are due to a singular and uncommon event, *i.e.*, the creation and capacity-building of the Space Bureau—for which the Commission received approval from the White House Office of Management and Budget and from U.S. Congressional Committees on Appropriations of the House of Representatives and the Senate—to better support United States leadership in the emerging space economy.

We, therefore, address concerns raised by commenters. *First*, we direct the

Office of Managing Director to facilitate an extended period for payment, as appropriate, for Space Bureau regulatory fee payors who may have difficulty paying the higher FY 2024 fee. Specifically, consistent with the Commission's policies and rules, the Office of Managing Director will work with any earth or space station fee payor that intends to meet its fee obligation to the greatest extent possible to utilize installment plans for payment of fees that it may find to be exceptionally higher than anticipated, *e.g.*, any amount over 150% of the FY 2023 fee. Space Bureau regulatory fee payors who may have difficulty paying the FY 2024 fee, but not to the extent required to request a waiver, reduction, or deferral, could be eligible to pay their FY 2024 fees in installments if they are able to show that they cannot pay the fee in lump sum, but can do so with extended payment terms. *Second*, we direct the Office of Managing Director to fix the interest rate assessed on installment payments of FY 2024 regulatory fees at the lowest rate permitted by statute, and to not require the customary down payment. Finally, we remind parties seeking installment payment of FY 2024 regulatory fee debt that they may do so by submitting an email request to the following email address: regfeerelief@fcc.gov.

Regulatory fee payors may seek a waiver, reduction, or deferral of payment of a regulatory fee for good cause if the waiver, reduction, or deferral would serve the public interest. But while we cannot relax the standard we employ for fee waiver, reduction, or deferral based on financial hardship grounds, as we have always done, we can facilitate an approach that allows payors the flexibility to address increases due to singular Commission action.

Procedural Matters

Included below are procedural items as well as our current payment and collection methods. We include these payments and collection procedures here as a useful way of reminding regulatory fee payors and the public about these aspects of the annual regulatory fee collection process.

Commission's Registration System. To increase efficiency, the Commission is using an all-electronic payment system for regulatory fees, which is contained within the Commission's Registration System (CORES). Before using CORES for the first time, you must obtain an FCC Username through the FCC User Registration System, and subsequently use it to access CORES and either register an FCC Registration Number

(FRN) or associate an existing FRN to your password. If you are unable to register electronically, you may fax your application for a Registration Number (FCC Form 160) to the CORES Helpdesk at (202) 418-7869 for filing procedures.

Credit Card Transaction Levels. In accordance with *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, Section 7065.20a—*Credit Card Collections*, the total daily credit card transactions processed from a single payor can be no more than \$24,999.99 (hereinafter the "Maximum Daily Limit") and the total monthly transactions processed from a single payor (based on a rolling 30-day period) can be no more than \$100,000.00 (hereinafter the "Maximum Monthly Limit"). Transactions greater than the Maximum Daily Limit will be rejected. If a payor initiates multiple transactions on the same day with the same credit card, those transactions causing the total charge to exceed the Maximum Daily Limit will also be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the \$24,999.99 limit. Payors who wish to pay an amount greater than \$24,999.99 should consider available electronic alternatives such as debit cards, Automates Clearing House (ACH) debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in the Commission's Registration System (CORES). Further details will be provided regarding payment methods and procedures at the time of FY 2024 regulatory fee collection in Fact Sheets, <https://www.fcc.gov/regfees>.

Payment Methods. During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through CORES, ACH, debit card, or by wire transfer. Additional payment instructions are posted on the Commission's website at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>. The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of payment (*e.g.*, checks, cashier's checks, or money orders) will be rejected. For payments by wire, an FCC Form 159-E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Commission at (202) 418-2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees

should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

De Minimis Regulatory Fees, Section 9(e)(2) Exemption. Under the de minimis rule, and pursuant to our analysis under section 9(e)(2) of the Act, a regulatee is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is \$1,000 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees, not regulatory fees paid through multi-year filings, and it is not a permanent exemption. Each regulatee will need to reevaluate the total annual fee liability each fiscal year to determine whether it meets the de minimis exemption.

Standard Fee Calculations and Payment Dates. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

Media Services: Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2023 for AM/FM radio stations, VHF/UHF broadcast television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

Wireline (Common Carrier) Services: Regulatory fees must be paid for authorizations that were granted on or before October 1, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category. For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in § 52.103 of the Commission's rules. The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2023.

Wireless Services: Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2023. The number of subscribers, units, or telephone numbers on December 31, 2023 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

Wireless Services, Multi-year fees: The first eight regulatory fee categories in our Schedule of Regulatory Fees (first seven categories in our Calculation of Fees, Table 3) pay “small multi-year wireless regulatory fees.” Entities pay these regulatory fees in advance for the entire amount period covered by the five-year or ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of “small multi-year wireless” licenses that will be renewed or newly obtained in FY 2024.

Multichannel Video Programming Distributor (MVPD) Services (cable television operators, Cable Television Relay Service (CARS) licensees, DBS, and IPTV): Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2023. Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2023. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

Space Services: Regulatory fees must be paid for earth stations that were licensed (or authorized) on or before October 1, 2023. Regulatory fees must also be paid for Geostationary orbit space stations (GSO) and non-geostationary orbit satellite systems (NGSO), and the two NGSO subcategories “Other” and “Less Complex,” that were licensed and operational on or before October 1, 2023. Licensees of small satellites that

were licensed and operational on or before October 1, 2023 must also pay regulatory fees. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date. Rendezvous and Proximity Operations, On-Orbit Servicing, and Orbital Transfer Vehicle space station that were licensed and operational on or before October 1, 2023, must also pay regulatory fees, using the regulatory fee category for small satellites.

International Services (Submarine Cable Systems, Terrestrial and Satellite Services): Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2023. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2023, in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, “active circuits” include backup and redundant circuits as of December 31, 2023. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2023, responsibility for payment rests with the holder of the permit or license as of the fee due date.

CMRS and Mobile Services Assessments. The Commission will compile data from the Numbering Resource Utilization Forecast (NRUF) report that is based on “assigned” telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (“in” and “out”). We have included non-geographic numbers in the calculation of the number of subscribers for each CMRS provider in table 3 and the CMRS regulatory fee factor proposed in table 4. CMRS provider regulatory fees will be calculated and should be paid based on the inclusion of non-geographic numbers. CMRS providers can adjust the total number of subscribers, if needed. This information of telephone numbers (subscriber count) will be posted on CORES along with the carrier’s Operating Company Numbers (OCNs).

A carrier wishing to revise its telephone number (subscriber) count can do so by accessing CORES and following the prompts to revise their

telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation. The Commission will then review the revised count and supporting explanation, if any, and either approve or disapprove the submission in CORES. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide supporting documentation. If the Commission receives no response from the provider, or the Commission does not reverse its initial disapproval of the provider’s revised count submission, the fee payment must be based on the number of subscribers listed initially in CORES. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in CORES.

Because some carriers do not file the NRUF report, they may not see their telephone number counts in CORES. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.*, compute their telephone number counts as of December 31, 2023), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in CORES or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

Effective Date. Providing a 30-day period after **Federal Register** publication before the *Report and Order* becomes effective as normally required by 5 U.S.C. 553(d) will not allow sufficient time to collect the FY 2024 fees before FY 2024 ends on September 30, 2024. For this reason, pursuant to 5 U.S.C. 553(d)(3), we find there is good cause to waive the requirements of section 553(d), and the *Report and Order* will become effective upon publication in the **Federal Register**. Because payments of the regulatory fees will not actually be due until late September, persons affected by the *Report and Order* will still have a reasonable period in which to make their payments and thereby comply with the rules established herein.

List of Tables

TABLE 2—LIST OF COMMENTERS AND REPLY COMMENTERS

Commenter (for initial and reply comments filed in response to the Commission's annual FY 2024 regulatory fees NPRM, FCC 24–68 (rel. June 13, 2024))	Abbreviated name	Date filed
Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, Wyoming Association of Broadcasters.	State Broadcasters	July 15, 2024.
Astroscale U.S., Inc	Astroscale	July 15, 2024.
BlackSky Global LLC	BlackSky	July 15, 2024.
Capella Space Corp	Capella	July 15, 2024.
Commercial Smallsat Spectrum Management Association	CSSMA	July 15, 2024.
CTIA—The Wireless Association®	CTIA	July 29, 2024.
Intelsat License LLC	Intelsat	July 15, 2024.
Iridium Communications, Inc	Iridium	July 15, 2024, July 29, 2024.
Kepler Communications, Inc	Kepler	July 15, 2024, July 29, 2024.
Kinéis	Kinéis	July 15, 2024.
Myriota Pty. Ltd	Myriota	July 15, 2024.
National Association of Broadcasters	NAB	July 15, 2024.
Orbital Sidekick, Inc	OSK	July 29, 2024.
Satellite Industry Association	SIA	July 29, 2024.
Submarine Cable Coalition	Coalition	July 29, 2024.
TechFreedom	TechFreedom	July 29, 2024.
Tomorrow Companies, Inc	Tomorrow	July 15, 2024.
WorldVu Satellites Limited and Eutelsat S.A	Eutelsat Group	July 15, 2024.
Commenter (for initial and reply comments filed in response to the Space and Earth Station regulatory fees NPRM, FCC 24–31 (rel. Mar. 13, 2024))	Abbreviated name	Date filed
Anuvu Licensing Holdings, LLC	Anuvu	April 12, 2024.
AstroDigital U.S., Inc	AstroDigital	April 12, 2024.
Astroscale U.S., Inc	Astroscale	April 12, 2024.
Blue Origin, LLC	Blue Origin	April 12, 2024.
Commercial Smallsat Spectrum Management Association	CSSMA	April 12, 2024.
The Consortium for Execution of Rendezvous and Servicing Operations	CONFERS	April 29, 2024.
EchoStar Corporation and DIRECTV, LLC	EchoStar and DIRECTV ...	April 29, 2024.
Intelsat License LLC	Intelsat	April 12, 2024, April 29, 2024.
Iridium Communications, Inc	Iridium	April 29, 2024.
Kepler Communications, Inc	Kepler	April 12, 2024, April 29, 2024.
Kinéis	Kinéis	April 12, 2024, April 29, 2024.
Kuiper Systems, LLC	Kuiper	April 29, 2024.
Maxar Technologies, Inc	Maxar	April 29, 2024.
Myriota Pty. Ltd	Myriota	April 12, 2024, April 29, 2024.
National Association of Broadcasters	NAB	April 29, 2024.
NCTA—The Internet and Television Association	NCTA	April 12, 2024, April 29, 2024.
Planet Labs PBC	Planet	April 12, 2024.
SES Americom, Inc. and O3b Limited	SES	April 12, 2024, April 29, 2024.
Space Explorations Holdings, LLC	SpaceX	April 12, 2024, April 29, 2024.
Telesat Canada	Telesat	April 12, 2024, April 29, 2024.
Varda Space Industries, Inc	Varda	April 12, 2024.
Vast Space, LLC	Vast	April 29, 2024.
Viasat, Inc	Viasat	April 29, 2024.

Commenter (for initial and reply comments filed in response to the Space and Earth Station regulatory fees NPRM, FCC 24–31 (rel. Mar. 13, 2024))	Abbreviated name	Date filed
WorldVu Satellites Limited and Eutelsat S.A	Eutelsat Group	April 12, 2024, April 29, 2024.

<i>Ex parte</i> filings for FCC 24–31 and FCC 24–68	Date filed
Letter from Jameson Dempsey, Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 9, 2024) (SpaceX May 9 <i>ex parte</i>).	May 9, 2024.
Letter from W. Ray Rutngamiug, Associate General Counsel, Intelsat US LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 16, 2024) (Intelsat May 16 <i>ex parte</i>).	May 16, 2024.
Letter from Jarett S. Taubman, VP and Deputy Chief Governmental Affairs and Regulatory Officer, Viasat, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 16, 2024) (Viasat May 16 <i>ex parte</i>).	May 16, 2024.
Letter from James S. Blitz, Senior Vice President, Regulatory Counsel, Sirius XM Radio, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 22, 2024) (Sirius XM May 22 <i>ex parte</i>).	May 22, 2024.
Letter from Jameson Dempsey, Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 23, 2024) (SpaceX May 23 <i>ex parte</i>).	May 23, 2024.
Letter from Will Lewis, counsel to Myriota Pty. Ltd., to Marlene H. Dortch, Secretary, Federal Communications Commission (May 28, 2024) (Myriota May 28 <i>ex parte</i>).	May 28, 2024.
Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (May 28, 2024) (Intelsat May 28 <i>ex parte</i>).	May 28, 2024 (erratum filed May 30, 2024).
Letter from Suzanne Malloy, Vice President, Regulatory Affairs, O3b Limited, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 7, 2024) (SES June 7 <i>ex parte</i>).	June 7, 2024.
Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 11, 2024) (Intelsat June 11 <i>ex parte</i>).	June 11, 2024.
Letter from Kara Leibin Azocar, Vice President, Regulatory, Iridium Satellite LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 13, 2024) (Iridium June 13 <i>ex parte</i>).	June 13, 2024.
Letter from David S. Keir, Counsel to Kinéis, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 17, 2024) (Kinéis June 17 <i>ex parte</i>).	June 17, 2024.
Letter from Kara Leibin Azocar, Vice President, Regulatory, Iridium Satellite LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 20, 2024) (Iridium June 20 <i>ex parte</i>).	June 20, 2024.
Letter from Emily A. Gomes, Associate General Counsel, National Association of Broadcasters, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 16, 2024) (NAB July 16 <i>ex parte</i>).	July 16, 2024.
Letter from Polly Avers, Senior Regulatory Associate, Kepler Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 18, 2024) (Kepler July 18 <i>ex parte</i>).	July 18, 2024.
Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 1, 2024) (Intelsat Aug. 1 <i>ex parte</i>).	Aug. 1, 2024.
Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 5, 2024) (Intelsat Aug. 5 <i>ex parte</i>).	Aug. 5, 2024.
Letter from Cynthia J. Grady, Assistant General Counsel, Intelsat US LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 8, 2024) (Intelsat Aug. 8 <i>ex parte</i>).	Aug. 8, 2024.
Letter from J.G. Harrington, Counsel to Iridium Communications Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 9, 2024) (Iridium Aug. 9 <i>ex parte</i>).	Aug. 9, 2024.
Letter from Tom Stroup, President, Satellite Industry Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 13, 2024) (SIA Aug. 13 <i>ex parte</i>).	Aug. 13, 2024.
Letter from Elisabeth Neasmith, Senior Director ITU and Regulatory, Telesat, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 14, 2024) (Telesat Aug. 14 <i>ex parte</i>).	Aug. 14, 2024.
Letter from J.G. Harrington, Counsel to Iridium Communications Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 15, 2024) (Iridium Aug. 15 <i>ex parte</i>).	Aug. 15, 2024.
Letter from J.G. Harrington, Counsel to Iridium Communications Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 19, 2024) (Iridium Aug. 19 <i>ex parte</i>).	Aug. 19, 2024.

TABLE 3—CALCULATION OF FY 2024 REGULATORY FEES—CALCULATION OF FY 2024 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2024 payment units	Yrs	FY 2023 revenue estimate	Pro-rated FY 2024 revenue requirement	Computed FY 2024 regulatory fee	Rounded FY 2024 reg. fee	Expected FY 2024 revenue
PLMRS (Exclusive Use)	1,150	10	300,000	287,500	25.00	25	287,500
PLMRS (Shared use)	23,300	10	1,900,000	2,330,000	10.00	10	2,330,000
Microwave	16,500	10	4,000,000	4,125,000	25.00	25	4,125,000
Marine (Ship)	7,000	10	1,050,000	1,050,000	15.00	15	1,050,000
Aviation (Aircraft)	5,800	10	480,000	580,000	10.00	10	580,000
Marine (Coast)	280	10	96,000	112,000	40.00	40	112,000
Aviation (Ground)	270	10	60,000	54,000	20.00	20	54,000
AM Class A ¹	58	1	286,800	266,815	4,600	4,600	266,800
AM Class B ¹	1,305	1	3,556,605	3,310,685	2,537	2,535	3,308,175

TABLE 3—CALCULATION OF FY 2024 REGULATORY FEES—CALCULATION OF FY 2024 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2024 payment units	Yrs	FY 2023 revenue estimate	Pro-rated FY 2024 revenue requirement	Computed FY 2024 regulatory fee	Rounded FY 2024 reg. fee	Expected FY 2024 revenue
AM Class C ¹	784	1	1,273,910	1,185,436	1,512	1,510	1,183,840
AM Class D ¹	1,325	1	4,208,245	3,916,079	2,956	2,955	3,915,375
FM Classes A, B1 & C3 ¹	3,021	1	8,885,560	8,257,752	2,733	2,735	8,262,435
FM Classes B, C, C0, C1 & C2 ¹	3,064	1	10,872,945	10,111,573	3,300	3,300	10,111,200
AM Construction Permits ²	2	1	3,100	1,170	585	585	1,170
FM Construction Permits ²	14	1	17,360	14,350	1,025	1,025	14,350
Digital Television ⁴ (including Satellite TV)	3.541 billion population.	1	25,463,735	23,365,758	.0065978	.006598	23,363,518
Digital TV Construction Permits ²	5	1	20,400	26,000	5,200	5,200	26,000
LPTV/Class A/Translators FM Trans/Boosters	6,215	1	1,644,500	1,515,832	243.9	245	1,522,675
CARS Stations	105	1	206,400	191,414	1,823	1,825	191,625
Cable TV Systems, including IPTV & DBS	50,000,000	1	68,880,000	63,587,626	1.2718	1.27	63,500,000
Interstate Telecommunication Service Providers	\$22,700,000,000	1	135,540,000	122,977,045	0.005420	0.005420	123,034,000
Toll Free Numbers	35,000,000	1	4,511,000	4,225,547	0.1207	0.12	4,200,000
CMRS Mobile Services (Cellular/Public Mobile)	576,200,000	1	88,480,000	90,358,789	0.1568	0.16	92,192,000
CMRS Messaging Services	600,000	1	104,000	48,000	0.0800	0.080	48,000
BRS/	1,200	1	836,500	870,000	725	725	870,000
LMDS	370	1	252,000	268,250	725	725	268,250
Per Gbps circuit Int'l Bearer Circuits Terrestrial (Common & Non-Common) & Satellite (Common & Non-Common).	20,000	1	442,000	335,565	16.78	17	340,000
Submarine Cable Providers (See chart at bottom of table 4) ³ .	71.56	1	8,228,605	6,375,737	89,096	89,095	6,375,638
Earth Stations	2,900	1	1,667,500	7,569,225	2,610	2,610	7,569,000
Space Stations (Geostationary)	140	1	15,990,880	20,181,854	144,156	144,155	20,181,700
Space Stations (Non-Geostationary, Other)	11	1	3,129,795	10,606,205	964,200	964,200	10,606,200
Space Stations (Non-Geostationary, Less Complex)	6	1	782,430	2,651,551	441,925	441,925	2,651,550
Space Stations (Non-Geostationary, Small Satellite)	16	1	85,505	195,440	12,215	12,215	195,440
***** Total Estimated Revenue to be Collected			392,991,324	389,914,238			392,795,910
***** Total Revenue Requirement			390,192,000	390,192,000			390,192,000
Difference			2,799,324	(277,762)			2,603,910

¹ The fee amounts listed in the column entitled "Rounded New FY 2024 Regulatory Fee" constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2024 regulatory fees for AM/FM radio station are listed on a grid located at the end of table 4.

² The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service based on the threshold 10,001–25,000, the traditional basis for identifying the lowest licensed fee. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

³ The chart at the end of table 4 lists the actual submarine cable bearer circuit regulatory fee rates (on a common and non-common carrier basis), whereas the submarine cable fee rate in table 3 is a weighted average.

⁴ The actual digital television regulatory fees to be paid by call sign are identified in table 8.

TABLE 4—SCHEDULE OF FEES—FY 2024 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80, and 90) (Includes Non-Geographic telephone numbers).	.16.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24, and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	725.
Local Multipoint Distribution Service (per call sign) (47 CFR part 101)	725.
AM Radio Construction Permits	585.
FM Radio Construction Permits	1,025.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	\$.006598.
Digital TV Construction Permits	See table 8 for fee amounts due, also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees .
	5,200.

TABLE 4—SCHEDULE OF FEES—FY 2024 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$s)
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	245.
CARS (47 CFR part 78)	1,825.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS).	1.27.
Interstate Telecommunication Service Providers (per revenue dollar)	.005420.
Toll Free (per toll free subscriber) (47 CFR 52.101(f))	.12.
Earth Stations (47 CFR part 25)	2,610.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	144,155.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other).	964,200.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex).	441,925.
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite).	12,215.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	\$17.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2024 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤10,000	\$560	\$405	\$350	\$385	\$615	\$700
10,001–25,000	935	675	585	645	1,025	1,170
25,001–75,000	1,405	1,015	880	970	1,540	1,755
75,001–150,000	2,105	1,520	1,315	1,450	2,305	2,635
150,001–500,000	3,160	2,280	1,975	2,180	3,465	3,955
500,001–1,200,000	4,730	3,415	2,960	3,265	5,185	5,920
1,200,001–3,000,000	7,105	5,130	4,445	4,900	7,790	8,890
3,000,001–6,000,000	10,650	7,690	6,665	7,345	11,675	13,325
>6,000,000	15,980	11,535	10,000	11,025	17,515	19,995

FY 2024 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2023)	Fee ratio (units)	FY 2024 regulatory fees
Less than 50 Gbps	.0625	\$5,570
50 Gbps or greater, but less than 250 Gbps	.125	11,140
250 Gbps or greater, but less than 1,500 Gbps	.25	22,275
1,500 Gbps or greater, but less than 3,500 Gbps	.5	44,550
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	89,095
6,500 Gbps or greater	2.0	178,190

Table 5—Sources of FY 2024 Payment Units*Sources of Payment Unit Estimates for FY 2024*

In order to calculate individual service fees for FY 2024, we adjusted FY 2023 payment units for each service to more accurately reflect expected FY 2024 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, where available. The

databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term "units" reflect licenses or permits that have been issued, but for other fee categories, the term "units" reflect quantities such

as subscribers, population counts, circuit counts, telephone numbers, and revenues. As more current data is received after an *NPRM* is released, the Commission sometimes adjusts the *NPRM* fee rates to reflect the new information in the *Report and Order*. This is intended to make sure that the fee rates in the *Report and Order* reflect more recent and accurate information. We realize that by adjusting the unit counts as more accurate information is received may adjust the fee rates for certain regulatory fee categories. Certain entities that collect the fees from customers in advance in order to pay

the Commission, such as Cable and DBS companies, ITSP providers, Cell Phone and Toll-Free providers, to name a few, may need to adjust their billings to customers as the Commission adjusts its fee rates. As a result, the Commission understands that these adjustments are necessary so that these regulatees can recover their fee obligations from their customers.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2024

estimates with actual FY 2023 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2024 and the fact that, in many services, the number of actual licensees or station

operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2024 payment units are based on FY 2023 actual payment units, it does not necessarily mean that our FY 2024 projection is exactly the same number as in FY 2023. We have either rounded the FY 2024 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) information as well as prior year payment information. Estimates have been adjusted to take into consideration the licensing of portions of these services.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2023 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2023 payment data.
AM/FM Radio Stations	Based on downloaded LMS data, adjusted for exemptions, and actual FY 2023 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.
AM/FM/TV Construction Permits	Based on LMS data, adjusted for exemptions, and actual FY 2023 payment units.
LPTV, Translators and Boosters, Class A Television	Based on LMS data, adjusted for exemptions, and actual FY 2023 payment units.
BRS (formerly MDS/MMDS)LMDS	Based on WTB reports and actual FY 2023 payment units. Based on WTB reports and actual FY 2023 payment units.
Cable Television Relay Service (CARS) Stations	Based on cable trend data, data from the Media Bureau's COALS database, and actual FY 2023 payment units.
Cable Television System Subscribers, Including IPTV Subscribers	Based on publicly available data sources for estimated subscriber counts, trend information from past payment data, and actual FY 2023 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499—A worksheets due in April 2024, and any data assistance provided by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau licensing data and actual FY 2023 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau data reports and actual FY 2023 payment units.
International Bearer Circuits	Based on assistance provided by the International Bureau, any data submissions by licensees, adjusted as necessary, and actual FY 2023 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2023 payment units.

Table 6—Measurements That Determine Signal Contours and Population Coverages

Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @ 1 km) for the antenna system. The

standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in §§ 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids

were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was

applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 to predict the distance to the principal community (70 dBu (decibel above 1

microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids

were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 7—LISTING OF SPACE STATIONS—SATELLITE CHARTS FOR FY 2024 REGULATORY FEES—SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS

Licensee	Call sign	Satellite name	Type
Astranis Projects USA LLC	S3092	ARCTURUS	GSO.
Open Plaza Corp	S2922	SKY-B1	GSO.
DIRECTV Enterprises, LLC	S2640	DIRECTV D11	GSO.
DIRECTV Enterprises, LLC	S2869	DIRECTV D14	GSO.
DIRECTV Enterprises, LLC	S2632	DIRECTV D8	GSO.
DIRECTV Enterprises, LLC	S2669	DIRECTV D9S	GSO.
DIRECTV Enterprises, LLC	S2641	DIRECTV D10	GSO.
DIRECTV Enterprises, LLC	S2797	DIRECTV D12	GSO.
DIRECTV Enterprises, LLC	S2930	DIRECTV D15	GSO.
DIRECTV Enterprises, LLC	S2673	DIRECTV D5	GSO.
Alascom, Inc	S2133	SPACEWAY 2	GSO.
DIRECTV Enterprises, LLC	S3039	DIRECTV D16	GSO.
DISH Operating L.L.C	S2931	ECHOSTAR 18	GSO.
DISH Operating L.L.C	S2738	ECHOSTAR 11	GSO.
DISH Operating L.L.C	S2694	ECHOSTAR 10	GSO.
DISH Operating L.L.C	S2790	ECHOSTAR 14	GSO.
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO.
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO.
EchoStar Satellite Services L.L.C	S2179	ECHOSTAR 9	GSO.
EchoStar BSS Corp	S3093	ECHOSTAR 23	GSO.
ES 172 LLC	S2610	EUTELSAT 174A	GSO.
ES 172 LLC	S3021	EUTELSAT 172B	GSO.
Horizon-3 Satellite LLC	S2947	HORIZONS-3e	GSO.
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO.
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO.
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO.
Intelsat License LLC/Viasat, Inc	S2160	GALAXY 28	GSO.
Intelsat License LLC	S2414	INTELSAT 10-02	GSO.
Intelsat License LLC	S2972	INTELSAT 37e	GSO.
Intelsat License LLC	S2854	NSS-7	GSO.
Intelsat License LLC	S2409	INELSAT 905	GSO.
Intelsat License LLC	S2405	INTELSAT 901	GSO.
Intelsat License LLC	S2408	INTELSAT 904	GSO.
Intelsat License LLC	S2804	INTELSAT 25	GSO.
Intelsat License LLC	S2959	INTELSAT 35e	GSO.
Intelsat License LLC	S2237	INTELSAT 11	GSO.
Intelsat License LLC	S2785	INTELSAT 14	GSO.
Intelsat License LLC	S2380	INTELSAT 9	GSO.
Intelsat License LLC	S2831	INTELSAT 23	GSO.
Intelsat License LLC	S2915	INTELSAT 34	GSO.
Intelsat License LLC	S2863	INTELSAT 21	GSO.
Intelsat License LLC	S2750	INTELSAT 16	GSO.
Intelsat License LLC	S2715	GALAXY 17	GSO.
Intelsat License LLC	S2253	GALAXY 11	GSO.
Intelsat License LLC	S2381	GALAXY 3C	GSO.
Intelsat License LLC	S2887	INTELSAT 30	GSO.
Intelsat License LLC	S2924	INTELSAT 31	GSO.
Intelsat License LLC	S2647	GALAXY 19	GSO.
Intelsat License LLC	S2687	GALAXY 16	GSO.
Intelsat License LLC	S2733	GALAXY 18	GSO.
Intelsat License LLC	S2385	GALAXY 14	GSO.
Intelsat License LLC	S2386	GALAXY 13	GSO.
Intelsat License LLC	S3083	GALAXY 34	GSO.
Intelsat License LLC	S3015	GALAXY 33	GSO.
Intelsat License LLC	S3016	GALAXY 30	GSO.
Intelsat License LLC	S3076	GALAXY 31	GSO.
Intelsat License LLC	S3078	GALAXY 32	GSO.
Intelsat License LLC	S3148	GALAXY 36	GSO.
Intelsat License LLC	S3164	GALAXY 37	GSO.
Intelsat License LLC	S2704	INTELSAT 5	GSO.
Intelsat License LLC	S2817	INTELSAT 18	GSO.
Intelsat License LLC	S2850	INTELSAT 19	GSO.

TABLE 7—LISTING OF SPACE STATIONS—SATELLITE CHARTS FOR FY 2024 REGULATORY FEES—SPACE STATIONS (GEOSTATIONARY ORBIT): U.S.-LICENSED SPACE STATIONS—Continued

Licensee	Call sign	Satellite name	Type
Intelsat License LLC	S2368	INTELSAT 1R	GSO.
Intelsat License LLC	S2789	INTELSAT 15	GSO.
Intelsat License LLC	S2423	HORIZONS 2	GSO.
Intelsat License LLC	S2846	INTELSAT 22	GSO.
Intelsat License LLC	S2847	INTELSAT 20	GSO.
Intelsat License LLC	S2948	INTELSAT 36	GSO.
Intelsat License LLC	S2814	INTELSAT 17	GSO.
Intelsat License LLC	S2410	INTELSAT 906	GSO.
Intelsat License LLC	S2406	INTELSAT 902	GSO.
Intelsat License LLC	S2939	INTELSAT 33e	GSO.
Intelsat License LLC	S2382	INTELSAT 10	GSO.
Intelsat License LLC	S2751	INTELSAT 28	GSO.
Intelsat License LLC	S3023	INTELSAT 39	GSO.
Intelsat License LLC	S3066	INTELSAT 40e	GSO.
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA-1	GSO.
Ligado Networks Subsidiary, LLC	AMSC-1	MSAT-2	GSO.
Novavision Group, Inc	S2861	DIRECTV KU-79W	GSO.
Satellite CD Radio LLC	S2812	FM-6	GSO.
SES Americom, Inc	S2415	NSS-10	GSO.
SES Americom, Inc	S2162	AMC-3	GSO.
SES Americom, Inc	S2347	AMC-6	GSO.
SES Americom, Inc	S2826	SES-2	GSO.
SES Americom, Inc	S2807	SES-1	GSO.
SES Americom, Inc	S2180	AMC-15	GSO.
SES Americom, Inc	S2892	SES-3	GSO.
SES Americom, Inc	S3097/S3138	SES-19/SES-22	GSO.
SES Americom, Inc	S3099	SES-21	GSO.
Silkwave Africa, LLC	S3074	AsiaStar	GSO.
Sirius XM Radio Inc	S2710	FM-5	GSO.
Sirius XM Radio Inc	S3034/S2617/ S2616/S3033	SXM-8/XM-3/XM-4/SXM-7	GSO.
Skynet Satellite Corp	S2933	TELSTAR 12V	GSO.
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO.
ViaSat, Inc	S2747	VIASAT-1	GSO.
ViaSat, Inc	S3050/S917	VIASAT-89US/VIASAT-3	GSO.
XM Radio LLC	S2786	XM-5	GSO.

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite name	Type
ABS Global Ltd	S2987	ABS-3A	GSO.
Avanti Hylas 2 Ltd	S3130	HYLAS-4	GSO.
DBSD Services Ltd	S2651	DBSD G1	GSO.
Embratel TVSAT Telecomunicacoes S.A	S3142	Star One D2	GSO.
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT-2	GSO.
Embratel Tvsat Telecomunicacoes S.A	S2678	STAR ONE C2	GSO.
Embratel Tvsat Telecomunicacoes S.A	S2845	STAR ONE C3	GSO.
Eutelsat S.A	S3056	EUTELSAT 8 WEST B	GSO.
Eutelsat S.A	S3055	EUTELSAT 139 WEST A	GSO.
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO.
Hispamar Satélites, S.A	S2793	AMAZONAS-2	GSO.
Hispamar Satélites, S.A	S2886	AMAZONAS-3	GSO.
Hispamar Satélites, S.A	S3086	AMAZONAS NEXUS	GSO.
Hispasat, S.A	S2969	HISPASAT 30W-6	GSO.
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO.
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO.
New Skies Satellites B.V	S2756	NSS-9	GSO.
New Skies Satellites B.V	S2870	SES-6	GSO.
New Skies Satellites B.V	S3048	NSS-6	GSO.
New Skies Satellites B.V	S2828	SES-4	GSO.
New Skies Satellites B.V	S2950	SES-10	GSO.
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO.
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO.
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO.
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO.
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO.
SES Satellites (Gibraltar) Ltd	S2951	SES-15	GSO.
SES Americom, Inc	S3037	NSS-11	GSO.

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING—Continued

Licensee	Call sign	Satellite name	Type
SES Americom, Inc	S2964	SES-11	GSO.
SES-17 S.a.r.l	S3043	SES-17	GSO.
Telesat Brasil Capacidade de Satelites Ltda	S2821	ESTRELA DO SUL 2	GSO.
Telesat Canada	S2745	ANIK F1	GSO.
Telesat Canada	S2674	ANIK F1R	GSO.
Telesat Canada	S2703	ANIK F3	GSO.
Telesat Canada	S2472	ANIK F2	GSO.
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO.
Viasat, Inc	S2902	VIASAT-2	GSO.

SPACE STATIONS (GEOSTATIONARY ORBIT): NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

Licensee	Call sign	Satellite name	Type
APSTAR VI	APSTAR 6	M292090	GSO.
AUSSAT B 152E	OPTUS D2	M221170	GSO.
Ciel Satellite Group	Ciel-2	E050029	GSO.
DISH Operating LLC	Quetzsat-1	E090020	GSO.
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO.
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO.
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO.
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO.
JCSAT-2B	JCSAT-2B	M174163	GSO.
NIMIQ 5	NIMIQ 5	E080107	GSO.
WILDBLUE-1	WILDBLUE-1	E040213	GSO.

SPACE STATIONS (PER LICENSE/CALL SIGN IN NON-GEOSTATIONARY ORBIT) (SMALL SATELLITE)

ITU name (if available)	Common name	Call sign	Type
Capella Space Corp	Capella-2, Capella-3, Capella-4	S3073	Small Satellite.
Capella Space Corp	Capella-5, Capella-6	S3080	Small Satellite.
Capella Space Corp	Capella-7, Capella-8	S3100	Small Satellite.
Capella Space Corp	Acadia-1	S3162	Small Satellite.
Launcher, Inc	Orbiter SN3	S3161	Small Satellite.
Loft Orbital Solutions Inc	YAM-3	S3072	Small Satellite.
Loft Orbital Solutions Inc	YAM-5	S3147	Small Satellite.
Turion Space Corp	DROID.001	S3146	Small Satellite.
R2 Space, Inc	XR-1	S3067	Small Satellite.
ICEYE US, Inc	ICEYE	S3082	Small Satellite.
Umbra Lab Inc	Umbra SAR	S3095	Small Satellite.
ICEYE US, Inc	ICEYE Second Tranche	S3165	Small Satellite.
Space Logistics, LLC	Mission Extension Vehicle-1	S2990	RPO/OOS.
Space Logistics, LLC	Mission Extension Vehicle-2	S3059	RPO/OOS.
Momentus Space, LLC	Vigoride-5	S3144	OTV.
Momentus Space, LLC	Vigoride-6	S3154	OTV.
Spaceflight, Inc	Sherpa-AC1	S3133	OTV.

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—LESS COMPLEX

ITU name (if available)	Common name	Call sign	Type
Planet Labs	Flock/Skysats	S2912	Less Complex.
Maxar License	WorldView 1, 2 & 3, GeoEye-1	S2129/S2348	Less Complex.
BlackSky Global	Global	S3032	Less Complex.
Orbital Sidekick, Inc	GHOST	S3139	Less Complex.
Hawkeye 360	HE360	S3042	Less Complex.
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex.

SPACE STATIONS (NON-GEOSTATIONARY ORBIT)—OTHER

ITU name (if available)	Common name	Call sign	Type
ORBCOMM License Corp	ORBCOMM	S2103	Other.
Iridium Constellation LLC	IRIDIUM	S2110	Other.
Telesat Canada	TELESAT Ku/Ka-Band	S2976	Other.
Kepler Communications, Inc	KEPLER	S2981	Other.
Myriota Pty. Ltd	MYRIOTA	S3047	Other.
O3b Ltd	O3b	S2935	Other.
Globalstar License LLC	GLOBALSTAR	S2115	Other.
Space Exploration Holdings, LLC	SPACEX/Ku/KaBand	S2983/S3018	Other.
Space Exploration Holdings, LLC	SPACEX/GEN 2	S3069	Other.
Swarm Technologies, Inc	SWARM	S3041	Other.
WorldVu Satellites Ltd	ONEWEB	S2963	Other.

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
3246	KAHH-TV	1,018,897	939,246	\$ 6,197
18285	KAAL	605,222	580,564	3,831
11912	KAAS-TV	243,984	243,947	1,610
56528	KABB	3,017,860	3,000,477	19,797
282	KABC-TV	18,303,336	17,670,502	116,590
1236	KACV-TV	383,228	383,071	2,528
33261	KADN-TV	889,583	889,583	5,869
8263	KAFF-TV	139,510	124,133	819
2728	KAET	4,867,739	4,836,434	31,911
2767	KAFT	1,294,492	1,218,670	8,041
62442	KAID	864,547	857,276	5,656
4145	KAIL-TV	203,698	179,435	1,184
67494	KAIL	2,091,288	2,061,175	13,600
13988	KAIT	594,090	583,749	3,852
40517	KAJB	393,654	393,355	2,595
65522	KAKE	821,488	816,811	5,389
804	KAKM	397,237	395,241	2,608
148	KAKW-DT	3,350,876	3,242,159	21,392
51598	KALB-TV	933,915	932,500	6,153
51241	KALO	1,018,088	971,631	6,411
40820	KAMC	411,973	411,949	2,718
8523	KAMR-TV	377,485	377,410	2,490
65301	KAMU-TV	395,784	392,044	2,587
2506	KAPP	337,194	298,159	1,967
3658	KARD	680,743	678,724	4,478
23079	KARE	4,243,145	4,234,439	27,939
33440	KARK-TV	1,243,813	1,230,366	8,118
37005	KARZ-TV	1,153,588	1,134,221	7,484
32311	KASA-TV	1,198,361	1,159,350	7,649
41212	KASN	1,200,705	1,185,725	7,823
7143	KASW	4,828,272	4,813,078	31,757
55049	KASY-TV	1,182,887	1,143,258	7,543
33471	KATC	1,376,057	1,376,057	9,079
13813	KATN	95,520	95,197	628
21649	KATU	3,400,708	3,238,560	21,368
33543	KATV	1,285,451	1,265,986	8,353
50182	KAUT-TV	1,810,654	1,809,428	11,939
21488	KAUU	398,876	396,486	2,616
6864	KAUZ-TV	366,943	365,162	2,409
73101	KAVU-TV	323,202	322,961	2,131
49579	KAWB	193,767	193,705	1,278
49578	Kawe	139,854	137,788	909
58684	KAYU-TV	925,282	861,276	5,683
29234	KAZA-TV	15,481,136	14,233,993	93,916
17433	KAZD	8,087,952	8,085,339	53,347
776273	KAZF	253,785	188,057	1,241
1151	KAZQ	1,137,703	1,126,947	7,436
35811	KAZT-TV	495,353	409,112	2,699
4148	KBAK-TV	1,626,532	1,363,867	8,999
16940	KBCA	465,218	465,157	3,069
53586	KBCB	1,510,168	1,478,647	9,756

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
22685	KBDI-TV	4,731,715	4,335,180	28,604
56384	KBEH	18,512,098	18,476,669	121,909
65395	KBFD-DT	1,016,508	887,671	5,857
169030	KBGS-TV	176,432	173,977	1,148
61068	KBHE-TV	153,390	144,914	956
48556	KBIM-TV	226,233	226,194	1,492
29108	KBIN-TV	1,014,918	1,013,041	6,684
33658	KBJR-TV	278,564	274,572	1,812
83306	KBLN-TV	322,286	145,745	962
63768	KBLR	2,280,730	2,220,879	14,653
53324	KBME-TV	146,149	146,082	964
10150	KBMT	799,217	798,262	5,267
22121	KBMY	142,682	142,622	941
49760	KBOI-TV	869,688	862,287	5,689
55370	KBRR	154,408	154,405	1,019
66414	KBSD-DT	151,986	151,901	1,002
66415	KBSH-DT	97,884	95,916	633
19593	KBSI	730,259	728,325	4,805
66416	KBSL-DT	47,462	46,328	306
4939	KBSV	1,535,281	1,424,913	9,402
62469	KBTC-TV	4,319,699	4,228,861	27,902
61214	KBTX-TV	771,692	771,692	5,092
6669	KBTX-TV	5,354,551	5,351,089	35,306
35909	KBVO	1,911,833	1,684,206	11,112
58618	KBVU	136,908	121,846	804
6823	KBYU-TV	2,838,181	2,620,447	17,290
33756	KBZK	156,388	139,258	919
21422	KCAL-TV	18,258,912	17,586,821	116,038
11265	KCAU-TV	769,096	754,352	4,977
14867	KCBA	3,334,176	2,557,080	16,872
27507	KCBD	433,372	432,694	2,855
9628	KCBS-TV	18,628,137	17,359,665	114,539
49750	KCBY-TV	92,825	77,624	512
33710	KCCI	1,216,146	1,209,219	7,978
9640	KCCW-TV	294,831	287,246	1,895
63158	KCDO-TV	3,305,368	3,160,730	20,854
62424	KCDT	807,726	762,258	5,029
83913	KCEB	446,377	445,850	2,942
57219	KCEC	4,497,531	4,237,580	27,960
10245	KCEN-TV	2,224,490	2,174,193	14,345
13058	KCET	17,868,933	16,310,676	107,618
18079	KCFW-TV	196,292	157,001	1,036
132606	KCGE-DT	129,244	129,244	853
60793	KCHF	1,157,628	1,127,207	7,437
33722	KCIT	392,243	391,646	2,584
62468	KCKA	1,082,723	906,771	5,983
41969	KCLO-TV	150,949	145,392	959
47903	KCNC-TV	4,460,509	4,175,114	27,547
71586	KCNS	9,007,762	8,012,556	52,867
33742	KCOP-TV	18,134,022	17,318,605	114,268
19117	KCOS	1,092,982	1,092,792	7,210
63165	KCOY-TV	700,154	478,768	3,159
33894	KCPQ	5,131,164	4,985,829	32,896
53843	KCPT	2,690,171	2,688,808	17,741
33875	KCRA-TV	11,608,107	7,153,845	47,201
9719	KCRG-TV	1,174,546	1,156,435	7,630
60728	KCSD-TV	323,237	323,093	2,132
59494	KCSG	229,899	220,818	1,457
33749	KCTS-TV	4,848,434	4,778,758	31,530
41230	KCTV	2,732,197	2,730,443	18,015
58605	KCVU	700,745	689,702	4,551
10036	KCWC-DT	42,872	38,501	254
64444	KCWE	2,642,880	2,641,432	17,428
51502	KCWI-TV	1,152,163	1,151,070	7,595
42008	KCWO-TV	55,411	55,383	365
166511	KCWV	210,633	210,626	1,390
24316	KCWX	4,947,756	4,941,660	32,605
68713	KCWY-DT	85,085	84,715	559
22201	KDAF	7,951,276	7,949,040	52,448

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
33764	KDBC-TV	1,101,513	1,097,028	7,238
79258	KDCK	43,010	42,993	284
166332	KDCU-DT	773,823	773,808	5,106
38375	KDEN-TV	3,968,060	3,943,641	26,020
17037	KDFI	7,990,955	7,989,287	52,713
33770	KDFW	7,962,141	7,959,855	52,519
29102	KDIN-TV	1,193,740	1,189,191	7,846
25454	KDKA-TV	3,569,162	3,428,192	22,619
60740	KDKF	73,619	66,137	436
4691	KDLH	267,326	264,686	1,746
41975	KDLO-TV	214,024	213,819	1,411
55379	KDLT-TV	700,230	689,305	4,548
55375	KDLV-TV	98,101	97,673	644
25221	KDMD	394,250	391,278	2,582
78915	KDMI	1,248,443	1,247,337	8,230
56524	KDNL-TV	3,013,924	3,009,244	19,855
24518	KDOC-TV	18,264,021	17,379,123	114,667
1005	KDOR-TV	1,180,603	1,177,894	7,772
60736	KDRV	551,809	469,537	3,098
61064	KDSB-TV	65,355	60,171	397
53329	KDSE	52,777	51,188	338
56527	KDSM-TV	1,202,702	1,201,866	7,930
49326	KDTN	7,901,133	7,898,922	52,117
83491	KDTP	25,965	23,729	157
33778	KDTV-DT	8,697,794	7,750,134	51,135
67910	KDTX-TV	7,985,188	7,983,676	52,676
126	KDVR	4,301,541	4,144,268	27,344
18084	KECI-TV	228,161	210,560	1,389
51208	KECY-TV	407,175	403,848	2,665
58408	KEDT	527,343	527,343	3,479
55435	KEET	181,333	161,389	1,065
37103	KEKE	105,022	101,614	670
41983	KELO-TV	767,130	715,437	4,720
34440	KEMO-TV	9,007,762	8,012,556	52,867
776162	KEMS	55,920	54,847	362
2777	KEMV	634,060	576,758	3,805
26304	KENS	3,091,086	3,077,749	20,307
63845	KENV-DT	52,294	45,932	303
18338	KENW	85,762	85,762	566
50591	KEPB-TV	631,758	574,973	3,794
56029	KEPR-TV	515,354	493,941	3,259
49324	KERA-TV	7,984,381	7,981,440	52,662
40878	KERO-TV	1,387,245	1,257,683	8,298
61067	KESD-TV	172,302	165,214	1,090
25577	KESQ-TV	1,487,393	615,803	4,063
50205	KETA-TV	1,874,445	1,860,161	12,273
62182	KETC	2,945,200	2,942,622	19,415
37101	KETD	3,918,776	3,879,692	25,598
2768	KETG	421,357	403,179	2,660
12895	KETH-TV	7,296,694	7,296,428	48,142
55643	KETK-TV	1,072,485	1,071,097	7,067
2770	KETS	1,209,518	1,191,713	7,863
53903	KETV	1,491,674	1,486,408	9,807
92872	KETZ	505,102	502,310	3,314
68853	KEYC-TV	553,554	539,853	3,562
33691	KEYE-TV	3,533,479	3,444,549	22,727
60637	KEYT-TV	1,466,777	1,275,243	8,414
83715	KEYU	351,434	351,403	2,319
34406	KEZI	1,221,893	1,166,907	7,699
34412	KFBB-TV	96,782	95,488	630
125	KFCT	967,548	960,099	6,335
51466	KFDA-TV	394,744	393,695	2,598
22589	KFDM	770,621	770,609	5,084
48521	KFDR	672,350	657,307	4,337
65370	KFDX-TV	367,320	366,583	2,419
49264	KFFV	4,674,758	4,634,964	30,581
12729	KFFX-TV	467,787	463,006	3,055
83992	KFJX	709,125	679,797	4,485
42122	KFMB-TV	4,239,135	3,914,207	25,826

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
53321	KFME	442,176	441,664	2,914
74256	KFNB	84,543	83,990	554
21613	KFNE	53,059	52,392	346
21612	KFNR	9,724	9,457	62
66222	KFOR-TV	1,789,693	1,789,342	11,806
33716	KFOX-TV	1,107,424	1,097,251	7,240
41517	KFPH-DT	385,474	313,720	2,070
81509	KFPX-TV	1,072,290	1,072,222	7,075
31597	KFQX	197,918	173,495	1,145
59013	KFRE-TV	1,850,426	1,835,478	12,110
51429	KFSF-DT	7,986,866	7,039,241	46,445
66469	KFSM-TV	1,003,012	978,896	6,459
8620	KFSN-TV	1,973,852	1,957,279	12,914
29560	KFTA-TV	907,937	894,593	5,903
83714	KFTC	64,284	64,250	424
60537	KFTH-DT	7,287,908	7,287,530	48,083
60549	KFTR-DT	18,326,526	16,971,273	111,976
61335	KFTS	77,847	66,866	441
81441	KFTU-DT	109,271	105,476	696
34439	KFTV-DT	1,930,415	1,914,464	12,632
664	KFVE	91,164	81,417	537
592	KFVS-TV	867,835	847,638	5,593
29015	KFWD	7,970,373	7,964,229	52,548
35336	KFXA	914,357	912,893	6,023
17625	KFXB-TV	377,548	370,365	2,444
70917	KFXK-TV	969,012	966,868	6,379
84453	KFXL-TV	977,327	976,428	6,442
56079	KFXV	1,335,643	1,335,643	8,813
41427	KFYR-TV	153,218	150,858	995
25685	KGAN	1,121,266	1,109,006	7,317
34457	KGBT-TV	1,350,104	1,350,004	8,907
7841	KGCW	938,174	935,835	6,175
24485	KGEB	1,257,918	1,224,797	8,081
34459	KGET-TV	982,744	940,071	6,203
53320	KGFE	120,237	120,237	793
7894	KGIN	235,875	233,749	1,542
83945	KGLA-DT	1,754,806	1,754,806	11,578
34445	KGMB	1,016,756	907,381	5,987
58608	KGMC	2,076,523	2,052,808	13,544
36914	KGMD-TV	101,247	100,762	665
36920	KG MV	209,577	175,904	1,161
10061	KGNS-TV	283,777	274,877	1,814
34470	KGO-TV	9,406,080	8,630,291	56,943
56034	KGPE	1,829,902	1,812,936	11,962
81694	KGPX-TV	792,059	724,592	4,781
25511	KGTF	155,729	154,491	1,019
40876	KGT V	4,257,568	3,912,037	25,812
36918	KGUN-TV	1,479,221	1,292,183	8,526
34874	KGW	3,397,112	3,239,730	21,376
63177	KGWC-TV	84,597	84,117	555
63162	KGWL-TV	37,314	37,199	245
63166	KGWN-TV	558,685	528,237	3,485
63170	KGWR-TV	49,435	49,242	325
4146	KHAW-TV	102,381	101,946	673
60353	KHBS	610,455	588,263	3,881
27300	KHCE-TV	2,848,289	2,842,696	18,756
26431	KHET	1,022,459	1,009,772	6,662
21160	KHGI-TV	245,331	244,515	1,613
36917	KHII-TV	1,017,217	907,842	5,990
29085	KHIN	1,137,059	1,135,866	7,494
17688	KHME	196,002	194,233	1,282
47670	KHMT	193,159	188,714	1,245
47987	KHNE-TV	205,833	204,923	1,352
34867	KHNL	1,016,725	907,350	5,987
60354	KHOG-TV	862,177	797,810	5,264
4144	KHON-TV	1,016,508	944,271	6,230
34529	KHOU	7,289,635	7,287,991	48,086
4690	KHQA-TV	299,409	298,038	1,966
34537	KHQ-TV	938,773	887,184	5,854

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
30601	KHRR	1,298,625	1,241,818	8,194
34348	KHSD-TV	203,077	199,032	1,313
24508	KHSL-TV	634,956	615,388	4,060
69677	KHSV	2,384,812	2,343,597	15,463
64544	KHVO	101,138	99,980	660
23394	KIAH	7,307,171	7,306,816	48,210
34564	KICU-TV	8,992,796	7,837,235	51,710
56028	KIDK	351,335	348,794	2,301
58560	KIDY	126,096	126,079	832
53382	KIEM-TV	177,885	166,501	1,099
66258	KIFI-TV	370,169	365,995	2,415
16950	KIFR	2,356,175	2,330,021	15,373
10188	KIII	580,363	577,602	3,811
29095	KIIN	1,405,103	1,375,871	9,078
34527	KIKU	1,017,227	920,837	6,076
63865	KILM	18,009,859	16,478,550	108,725
56033	KIMA-TV	325,241	275,599	1,818
66402	KIMT	671,281	662,859	4,374
67089	KINC	2,320,873	2,230,933	14,720
34847	KING-TV	4,735,386	4,686,752	30,923
51708	KINT-TV	1,093,579	1,093,227	7,213
26249	KION-TV	2,602,418	906,539	5,981
62427	KIPT	190,856	189,839	1,253
66781	KIRO-TV	4,715,994	4,685,383	30,914
62430	KISU-TV	358,145	353,319	2,331
12896	KITU-TV	749,934	749,934	4,948
64548	KITV	1,016,508	890,101	5,873
59255	KIVI-TV	864,257	856,996	5,654
47285	KIXE-TV	484,629	444,405	2,932
13792	KJJC-TV	85,813	84,995	561
14000	KJLA	18,725,198	17,464,578	115,231
20015	KJNP-TV	96,266	96,001	633
53315	KJRE	15,414	15,394	102
59439	KJRH-TV	1,475,194	1,458,401	9,623
55364	KJRR	45,707	44,148	291
7675	KJTL	365,659	365,242	2,410
55031	KJTV-TV	426,315	426,302	2,813
13814	KJUD	32,087	31,083	205
36607	KJZZ-TV	2,837,622	2,620,561	17,290
83180	KKAI	1,016,756	995,859	6,571
58267	KKAP	1,002,980	967,770	6,385
24766	KKCO	218,313	183,190	1,209
776228	KKEL	396,796	390,474	2,576
35097	KKJB	780,452	775,264	5,115
22644	KKPX-TV	8,265,775	7,324,470	48,327
35037	KKTV	3,340,505	2,899,502	19,131
35042	KLAS-TV	2,421,827	2,256,225	14,887
52907	KLAX-TV	350,490	350,144	2,310
3660	KLBK-TV	409,551	409,512	2,702
65523	KLBY	29,875	29,852	197
38430	KLCS	17,868,933	16,310,676	107,618
77719	KLCW-TV	404,384	404,369	2,668
51479	KLDO-TV	267,717	267,717	1,766
37105	KLEI	149,648	122,977	811
56032	KLEW-TV	173,816	158,086	1,043
35059	KLFY-TV	1,380,417	1,379,775	9,104
54011	KLJB	1,003,676	992,763	6,550
11264	KLKN	1,295,353	1,249,913	8,247
52593	KLML	285,490	232,725	1,536
47975	KLNE-TV	124,206	124,134	819
38590	KLPA-TV	395,240	395,079	2,607
38588	KLPB-TV	749,224	749,224	4,943
749	KLRN	2,865,059	2,843,302	18,760
11951	KLRT-TV	1,206,848	1,187,015	7,832
8564	KLRU	3,404,331	3,364,831	22,201
8322	KLSR-TV	617,791	555,511	3,665
31114	KLST	205,611	176,862	1,167
24436	KLTJ	7,239,268	7,239,082	47,763
38587	KLTL-TV	438,847	438,847	2,896

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
38589	KLTM-TV	670,083	665,283	4,390
38591	KLTS-TV	930,704	927,650	6,121
68540	KLTV	1,125,646	1,108,403	7,313
12913	KLUJ-TV	1,304,523	1,304,523	8,607
57220	KLUZ-TV	1,122,002	1,061,683	7,005
11683	KLVX	2,368,176	2,246,495	14,822
82476	KLWB	1,066,369	1,066,248	7,035
40250	KLWY	652,057	648,301	4,277
64551	KMAU	230,508	205,410	1,355
51499	KMAX-TV	11,771,919	7,828,092	51,650
65686	KMBC-TV	2,690,459	2,688,812	17,741
35183	KMCB	71,693	69,118	456
41237	KMCC	2,384,330	2,325,062	15,341
42636	KMCI-TV	2,611,447	2,610,077	17,221
38584	KMCT-TV	270,862	270,855	1,787
22127	KMCY	80,761	80,722	533
162016	KMDE	34,041	34,035	225
26428	KMEB	239,702	216,916	1,431
39665	KMEG	763,806	758,839	5,007
35123	KMEX-DT	18,389,371	16,955,856	111,875
40875	KMGH-TV	4,484,612	4,211,082	27,785
35131	KMID	453,896	453,890	2,995
16749	KMIR-TV	3,014,399	805,795	5,317
63164	KMIZ	552,020	549,962	3,629
53541	KMLM-DT	358,819	358,819	2,367
52046	KMLU	685,717	681,660	4,498
47981	KMNE-TV	44,963	41,160	272
24753	KMOH-TV	217,161	202,513	1,336
4326	KMOS-TV	823,502	819,698	5,408
41425	KMOT	90,764	88,505	584
70034	KMOV	3,058,356	3,053,447	20,147
51488	KMPH-TV	1,871,826	1,831,011	12,081
73701	KMPX	7,985,243	7,981,841	52,664
44052	KMSB	1,390,772	1,081,454	7,135
68883	KMSP-TV	4,232,627	4,200,278	27,713
12525	KMSS-TV	1,047,384	1,044,317	6,890
43095	KMTP-TV	6,891,529	5,992,187	39,536
35189	KMTR	858,621	737,863	4,868
35190	KMTV-TV	1,482,627	1,481,213	9,773
77063	KMTW	782,241	782,233	5,161
35200	KMVT	203,865	194,642	1,284
32958	KMVU-DT	333,344	255,430	1,685
86534	KMYA-DT	181,750	181,710	1,199
51518	KMYS	2,695,906	2,689,444	17,745
54420	KMYT-TV	1,378,264	1,366,926	9,019
35822	KMYU	174,066	170,667	1,126
993	KNAT-TV	1,194,249	1,164,035	7,680
24749	KNAZ-TV	370,644	251,297	1,658
47906	KNBC	18,007,954	16,466,286	108,645
81464	KNBN	158,327	149,470	986
9754	KNCT	2,162,813	2,134,345	14,082
82611	KNDB	140,899	140,846	929
82615	KNDM	81,669	81,636	539
12395	KNDO	326,624	291,816	1,925
12427	KNDU	531,985	514,613	3,395
17683	KNEP	96,311	91,722	605
776145	KNGF	418,755	418,649	2,762
48003	KNHL	282,894	282,649	1,865
125710	KNIC-DT	2,916,877	2,900,176	19,135
59363	KNIN-TV	861,563	857,065	5,655
48525	KNLC	3,009,669	3,007,124	19,841
84215	KNMD-TV	1,175,472	1,147,431	7,571
55528	KNME-TV	1,185,928	1,145,659	7,559
47707	KNMT	3,242,939	3,141,420	20,727
48975	KNOE-TV	706,833	703,468	4,641
49273	KNOP-TV	84,998	83,626	552
10228	KNPB	684,366	522,715	3,449
55362	KNRR	24,339	24,315	160
35277	KNSD	4,176,531	3,908,916	25,791

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
19191	KNSN-TV	689,549	521,148	3,439
23302	KNSO	1,962,568	1,942,998	12,820
35280	KNTV	9,285,323	8,743,038	57,687
144	KNVA	3,326,171	3,285,676	21,679
33745	KNVN	497,887	470,307	3,103
69692	KNVO	1,359,785	1,359,785	8,972
29557	KNWA-TV	929,628	912,611	6,021
59440	KNXV-TV	4,836,838	4,826,028	31,842
59014	KOAA-TV	1,865,217	1,422,070	9,383
50588	KOAB-TV	254,424	250,749	1,654
50590	KOAC-TV	2,168,640	1,718,555	11,339
58552	KOAM-TV	822,738	789,385	5,208
53928	KOAT-TV	1,171,605	1,145,416	7,557
35313	KOB	1,189,849	1,152,270	7,603
35321	KOBF	198,225	163,241	1,077
8260	KOBI	595,619	551,251	3,637
62272	KOBR	227,347	226,868	1,497
50170	KOCB	1,803,171	1,802,139	11,891
4328	KOCE-TV	18,212,242	17,141,918	113,102
84225	KOCM	1,615,493	1,614,922	10,655
12508	KOCO-TV	1,890,246	1,881,152	12,412
83181	KOCW	80,292	80,262	530
18283	KODE-TV	789,082	781,251	5,155
66195	KOED-TV	1,555,369	1,523,164	10,050
50198	KOET	657,252	637,057	4,203
51189	KOFY-TV	5,746,338	4,850,897	32,006
34859	KOGG	206,000	173,034	1,142
166534	KOHD	248,737	244,163	1,611
35380	KOIN	3,398,786	3,237,691	21,362
35388	KOKH-TV	1,800,124	1,797,602	11,861
11910	KOKI-TV	1,428,477	1,415,308	9,338
48663	KOLD-TV	1,278,430	932,536	6,153
7890	KOLN	1,565,175	1,465,478	9,669
63331	KOLO-TV	1,045,027	912,343	6,020
28496	KOLR	1,111,540	1,075,340	7,095
21656	KOMO-TV	4,798,742	4,748,599	31,331
65583	KOMU-TV	560,878	559,926	3,694
776087	KONC	1,752,026	1,713,180	11,304
35396	KONG	4,651,055	4,627,490	30,532
60675	KOOD	107,949	107,840	712
50589	KOPB-TV	3,433,002	3,231,453	21,321
2566	KOPX-TV	1,674,969	1,674,820	11,050
64877	KORO	572,684	572,684	3,779
6865	KOSA-TV	412,004	408,993	2,699
34347	KOTA-TV	189,181	166,163	1,096
8284	KOTI	318,713	97,757	645
35434	KOTV-DT	1,476,322	1,464,332	9,662
56550	KOVR	11,787,731	7,857,430	51,843
51101	KOZJ	431,452	429,469	2,834
51102	KOZK	876,101	867,569	5,724
3659	KOZL-TV	1,026,947	999,396	6,594
35455	KPAX-TV	224,598	210,969	1,392
67868	KPAZ-TV	4,842,326	4,829,190	31,863
6124	KPBS	3,878,727	3,740,193	24,678
50044	KPBT-TV	405,749	405,749	2,677
77452	KPCB-DT	30,087	30,010	198
35460	KPDX	3,335,153	3,195,785	21,086
12524	KPEJ-TV	439,758	439,752	2,901
41223	KPHO-TV	4,847,036	4,823,456	31,825
61551	KPIC	162,187	108,923	719
86205	KPIF	294,133	287,132	1,894
25452	KPIX-TV	8,939,616	8,011,243	52,858
58912	KPJH	8,580,033	7,562,337	49,896
166510	KPJR-TV	3,994,308	3,966,833	26,173
13994	KPLC	1,433,578	1,431,830	9,447
41964	KPLO-TV	55,567	52,690	348
35417	KPLR-TV	3,020,349	3,017,559	19,910
12144	KPMR	1,795,745	1,521,941	10,042
47973	KPNE-TV	89,112	84,360	557

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
35486	KPNX	4,833,873	4,829,331	31,864
77512	KPNZ	2,843,405	2,620,343	17,289
73998	KPOB-TV	131,017	130,539	861
26655	KPPX-TV	4,839,734	4,825,175	31,837
53117	KPRC-TV	7,306,242	7,305,940	48,205
48660	KPRY-TV	42,882	42,790	282
61071	KPSD-TV	19,034	17,986	119
53544	KPTB-DT	351,156	349,137	2,304
81445	KPTF-DT	83,380	83,378	550
77451	KPTH	709,738	706,066	4,659
51491	KPTM	1,544,022	1,542,684	10,179
33345	KPTS	849,715	845,613	5,579
50633	KPTV	3,367,478	3,193,457	21,070
82575	KPTW	93,904	86,230	569
1270	KPVI-DT	301,761	295,401	1,949
58835	KPXB-TV	7,268,859	7,268,534	47,958
68695	KPXC-TV	3,953,241	3,922,814	25,883
68834	KPXD-TV	7,851,329	7,849,492	51,791
33337	KPXE-TV	2,621,434	2,620,523	17,290
5801	KPXG-TV	3,396,167	3,240,309	21,380
81507	KPXJ	1,114,713	1,111,470	7,333
61173	KPXL-TV	2,675,400	2,663,341	17,573
35907	KPXM-TV	3,872,706	3,871,246	25,542
58978	KPXN-TV	18,009,859	16,478,550	108,725
77483	KPXO-TV	1,016,659	977,430	6,449
21156	KPXR-TV	870,810	864,123	5,701
69619	KPYX	8,951,798	8,033,747	53,007
10242	KQCA	11,066,274	6,905,589	45,563
41430	KQCD-TV	46,118	43,974	290
18287	KQCK	3,914,615	3,869,797	25,533
78322	KQCW-DT	1,198,492	1,192,260	7,867
35525	KQDS-TV	309,526	305,800	2,018
35500	KQED	8,924,403	7,934,659	52,353
35663	KQEH	8,924,403	7,934,659	52,353
8214	KQET	3,221,916	2,234,120	14,741
5471	KQIN	585,179	585,151	3,861
17686	KQME	203,177	198,383	1,309
61063	KQSD-TV	32,060	31,225	206
8378	KQSL	209,114	145,828	962
20427	KQTV	1,587,910	1,493,576	9,855
78921	KQUP	801,534	624,922	4,123
306	KRBC-TV	237,068	236,992	1,564
166319	KRBK	1,018,307	1,001,775	6,610
22161	KRCA	18,303,336	17,670,502	116,590
57945	KRCB	9,553,735	9,246,484	61,008
41110	KRCG	758,918	744,644	4,913
8291	KRCR-TV	439,734	419,678	2,769
10192	KRCW-TV	3,330,638	3,194,693	21,079
49134	KRDK-TV	396,418	396,379	2,615
52579	KRDO-TV	3,041,472	2,649,733	17,483
70578	KREG-TV	159,270	97,419	643
34868	KREM	934,011	862,068	5,688
51493	KREN-TV	890,359	755,865	4,987
70596	KREX-TV	154,968	154,745	1,021
70579	KREY-TV	77,765	69,062	456
48589	KREZ-TV	148,142	101,846	672
43328	KRGV-TV	1,359,834	1,359,671	8,971
82698	KRII	130,753	129,582	855
29114	KRIIN	989,283	975,977	6,439
25559	KRIS-TV	576,145	576,104	3,801
22204	KRIV	7,295,333	7,294,571	48,130
14040	KRMA-TV	4,385,284	4,186,932	27,625
14042	KRMJ	184,799	169,573	1,119
20476	KRMT	3,457,214	3,353,993	22,130
84224	KRMU	86,743	70,549	465
20373	KRMZ	37,319	34,727	229
47971	KRNE-TV	45,930	38,258	252
60307	KRNV-DT	1,043,407	879,554	5,803
65526	KRON-TV	9,335,037	8,729,878	57,600

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
53539	KRPV-DT	65,504	65,504	432
48575	KRQE	1,174,664	1,143,133	7,542
57431	KRSU-TV	1,078,345	1,076,370	7,102
82613	KRTN-TV	86,907	67,161	443
35567	KRTV	95,862	94,385	623
84157	KRWB-TV	118,050	117,368	774
35585	KRWF	82,308	82,308	543
55516	KRWG-TV	929,122	719,343	4,746
48360	KRXI-TV	802,294	612,918	4,044
307	KSAN-TV	142,667	142,664	941
11911	KSAS-TV	773,161	773,144	5,101
53118	KSAT-TV	3,075,254	3,027,321	19,974
35584	KSAX	380,811	380,811	2,513
35587	KSAZ-TV	4,854,767	4,831,287	31,877
38214	KSBI	1,751,439	1,749,811	11,545
19653	KSBW	5,564,606	4,838,506	31,924
19654	KSBY	564,561	526,110	3,471
82910	KSCC	534,707	534,707	3,528
10202	KSCE	1,093,223	1,089,485	7,188
35608	KSCI	18,212,242	17,141,918	113,102
72348	KSCW-DT	927,681	922,979	6,090
46981	KSDK	3,013,779	3,007,368	19,843
35594	KSEE	1,888,344	1,874,494	12,368
29121	KSFL-TV	330,215	330,182	2,179
48658	KSFY-TV	731,978	677,603	4,471
17680	KSGW-TV	63,725	62,410	412
59444	KSHB-TV	2,616,078	2,614,543	17,251
73706	KSHV-TV	927,614	927,074	6,117
29096	KSIN-TV	349,020	347,636	2,294
34846	KSIX-TV	79,019	79,019	521
35606	KSKN	841,494	741,761	4,894
70482	KSLA	998,682	998,217	6,586
6359	KSL-TV	2,839,353	2,616,980	17,267
71558	KSMN	357,081	357,075	2,356
33336	KSMO-TV	2,585,699	2,584,094	17,050
28510	KSMQ-TV	540,217	524,751	3,462
35611	KSMS-TV	1,684,095	922,727	6,088
21161	KSNB-TV	748,097	747,971	4,935
72359	KSNC	166,315	165,997	1,095
67766	KSNE	640,722	637,167	4,204
72361	KSNG	143,267	143,050	944
72362	KSNK	46,872	43,725	288
67335	KSNT	657,321	629,824	4,156
10179	KSNV	2,283,885	2,225,135	14,681
72358	KSNW	810,301	809,927	5,344
61956	KSPS-TV	935,711	883,159	5,827
52953	KSPX-TV	7,814,495	5,846,886	38,578
166546	KSQA	391,323	383,112	2,528
53313	KSRE	83,984	83,984	554
35843	KSTC-TV	4,228,163	4,218,565	27,834
63182	KSTF	49,439	49,305	325
28010	KSTP-TV	4,230,921	4,222,032	27,857
60534	KSTR-DT	7,934,904	7,932,227	52,337
64987	KSTS	9,125,502	7,902,723	52,142
22215	KSTU	2,834,133	2,604,938	17,187
23428	KSTW	4,945,092	4,849,973	32,000
5243	KSVI	192,678	191,712	1,265
58827	KSWB-TV	3,976,536	3,773,857	24,900
60683	KSWK	78,448	78,334	517
35645	KSWO-TV	461,432	437,725	2,888
61350	KSYS	551,328	475,899	3,140
59988	KTAB-TV	281,813	281,579	1,858
999	KTBJ-TV	2,529,426	2,528,757	16,685
35648	KTAL-TV	1,072,280	1,070,439	7,063
12930	KTAS	501,069	491,644	3,244
81458	KTAZ	4,835,851	4,811,877	31,749
35649	KTBC	4,138,493	3,857,454	25,451
67884	KTBN-TV	18,729,484	17,423,297	114,959
67999	KTBO-TV	1,758,274	1,756,813	11,591

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
35652	KTBS-TV	1,138,628	1,135,638	7,493
28324	KTBU	7,242,592	7,242,368	47,785
67950	KTBW-TV	4,873,117	4,763,879	31,432
35655	KTBY	360,565	358,722	2,367
68594	KTCA-TV	4,022,616	4,008,908	26,451
68597	KTCI-TV	3,912,137	3,908,528	25,788
35187	KTCW	106,581	93,009	614
36916	KTDO	1,093,374	1,089,602	7,189
2769	KTEJ	417,496	415,013	2,738
83707	KTEL-TV	61,338	61,328	405
35666	KTEN	629,981	627,687	4,141
24514	KTFD-TV	3,767,471	3,727,523	24,594
35512	KTFF-DT	2,403,821	2,383,063	15,723
20871	KTFK-DT	7,705,367	5,721,312	37,749
68753	KTFN	1,095,022	1,091,962	7,205
35084	KTFQ-TV	1,188,205	1,154,792	7,619
29232	KTGM	153,836	153,653	1,014
2787	KTHV	1,302,388	1,276,430	8,422
29100	KTIN	275,295	273,715	1,806
66170	KTIV	806,217	800,304	5,280
49397	KTKA-TV	805,221	786,518	5,189
35670	KTLA	18,962,616	17,555,224	115,829
62354	KTLM	1,148,738	1,148,738	7,579
49153	KTLLN-TV	5,867,943	5,221,797	34,453
64984	KTMD	7,304,022	7,303,795	48,190
14675	KTMF	203,121	182,458	1,204
10177	KTMW	2,690,440	2,543,730	16,784
21533	KTNC-TV	9,007,762	8,012,556	52,867
47996	KTNE-TV	95,310	90,746	599
60519	KTNL-TV	8,275	8,274	55
74100	KTNV-TV	2,422,112	2,249,532	14,842
71023	KTNW	512,412	493,366	3,255
8651	KTOO-TV	32,198	32,017	211
7078	KTPX-TV	1,138,473	1,136,085	7,496
68541	KTRE	438,137	420,563	2,775
35675	KTRK-TV	7,318,272	7,316,846	48,277
28230	KTRV-TV	869,223	861,267	5,683
69170	KTSC	3,598,645	3,397,164	22,414
61066	KTSD-TV	84,807	83,980	554
37511	KTSF	8,697,794	7,750,134	51,135
67760	KTSM-TV	1,093,389	1,090,716	7,197
35678	KTTC	836,828	748,435	4,938
28501	KTTM	77,930	75,368	497
11908	KTTU	1,393,795	1,109,962	7,324
22208	KTTV	18,130,338	17,373,502	114,630
28521	KTTW	381,013	377,833	2,493
65355	KTTZ-TV	402,714	402,692	2,657
35685	KTUL	1,573,310	1,543,051	10,181
10173	KUUU-TV	397,237	395,237	2,608
77480	KUZZ-TV	1,841,616	1,840,457	12,143
49632	KVA	353,795	353,563	2,333
34858	KTVB	869,177	862,056	5,688
31437	KTV	140,329	104,355	689
68581	KTVD	4,468,718	4,179,057	27,573
35692	KTVE	607,145	606,961	4,005
49621	KTVF	96,106	95,973	633
5290	KTVH-DT	244,448	199,923	1,319
35693	KTVI	3,025,572	3,022,219	19,941
40993	KTVK	4,837,443	4,825,882	31,841
22570	KTVL	446,924	395,259	2,608
18066	KVMM-TV	303,243	250,287	1,651
59139	KTVN	1,043,407	885,756	5,844
21251	KTV	220,732	220,235	1,453
35694	KTVQ	197,125	190,529	1,257
50592	KTVR	153,040	56,934	376
23422	KTVT	8,233,312	8,230,812	54,307
35703	KTVU	9,036,813	8,056,602	53,157
35705	KTVW-DT	4,827,096	4,809,796	31,735
68889	KTVX	2,838,210	2,602,217	17,169

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
55907	KTVZ	249,013	246,030	1,623
18286	KTWO-TV	84,574	84,044	555
70938	KTWU	1,834,018	1,697,183	11,198
51517	KTXA	8,210,642	8,208,172	54,158
42359	KTXD-TV	8,012,541	8,010,333	52,852
51569	KTXH	7,301,821	7,301,673	48,176
10205	KTXL	9,145,873	6,451,158	42,565
308	KTXS-TV	255,216	254,480	1,679
69315	KUAC-TV	96,544	96,043	634
51233	KUAM-TV	153,836	153,836	1,015
2722	KUAS-TV	1,060,599	1,041,636	6,873
2731	KUAT-TV	1,596,429	1,361,399	8,983
60520	KUBD	15,387	13,666	90
70492	KUBE-TV	7,297,882	7,297,596	48,150
1136	KUCW	2,837,693	2,601,359	17,164
69396	KUED	2,837,687	2,603,895	17,180
69582	KUEN	2,806,982	2,580,258	17,025
82576	KUES	32,094	26,754	177
82585	KUEW	174,491	162,588	1,073
66611	KUFM-TV	203,395	180,333	1,190
169028	KUGF-TV	89,762	89,455	590
68717	KUHM-TV	166,592	156,454	1,032
69269	KUHT	7,288,782	7,288,082	48,087
62382	KUID-TV	482,761	308,950	2,038
169027	KUKL-TV	140,626	131,415	867
35724	KULR-TV	194,552	186,663	1,232
41429	KUMV-TV	70,878	70,314	464
81447	KUNP	133,781	45,006	297
4624	KUNS-TV	4,682,176	4,668,774	30,805
86532	KUOK	28,807	28,738	190
66589	KUON-TV	1,516,440	1,502,853	9,916
86263	KUPB	386,448	386,448	2,550
65535	KUPK	147,290	146,174	964
27431	KUPT	101,334	101,329	669
89714	KUPU	1,019,651	1,010,979	6,670
57884	KUPX-TV	2,824,302	2,598,543	17,145
23074	KUSA	4,470,580	4,195,376	27,681
61072	KUSD-TV	519,419	519,181	3,426
10238	KUSI-TV	3,853,072	3,707,454	24,462
43567	KUSM-TV	155,558	140,071	924
69694	KUTF	1,357,824	1,164,486	7,683
81451	KUTH-DT	2,636,456	2,416,549	15,944
68886	KUTP	4,842,720	4,823,413	31,825
35823	KUTV	2,837,398	2,601,168	17,163
63927	KUVE-DT	1,370,137	1,024,072	6,757
7700	KUVI-DT	1,287,700	1,076,164	7,101
35841	KUVN-DT	7,987,884	7,986,084	52,692
58609	KUVS-DT	4,496,875	4,458,448	29,417
49766	KVAL-TV	1,114,792	948,593	6,259
32621	KVAW	77,028	77,028	508
58795	KVCR-DT	19,073,599	18,308,953	120,802
35846	KVCT	291,432	290,038	1,914
10195	KVCW	2,283,670	2,224,688	14,678
64969	KVDA	3,114,838	3,092,933	20,407
19783	KVEA	18,300,497	17,059,098	112,556
12523	KVEO-TV	1,357,022	1,356,984	8,953
2495	KVEW	537,519	524,246	3,459
35852	KVHP	773,592	773,545	5,104
49832	KVIA-TV	1,093,389	1,090,716	7,197
35855	KVIE	11,759,390	8,232,137	54,316
40450	KVIH-TV	139,435	119,247	787
40446	KVII-TV	392,629	391,979	2,586
61961	KVLY-TV	409,018	408,931	2,698
16729	KVMD	15,940,782	15,143,297	99,915
83825	KVME-TV	26,212	22,277	147
25735	KVOA	1,386,793	1,069,725	7,058
35862	KVOS-TV	2,566,816	2,493,670	16,453
69733	KVPT	1,856,508	1,833,293	12,096
55372	KVRR	403,075	403,075	2,659

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
166331	KVSN-DT	3,136,196	2,698,298	17,803
608	KVTH-DT	319,985	318,374	2,101
2784	KVTJ-DT	1,459,963	1,459,552	9,630
607	KVTN-DT	970,045	963,130	6,355
35867	KVUE	3,458,312	3,395,187	22,401
78910	KVUI	286,007	279,513	1,844
35870	KVVU-TV	2,369,125	2,246,682	14,824
36170	KVYE	404,453	401,890	2,652
35095	KWBA-TV	1,194,062	1,136,172	7,496
78314	KWBM	694,164	676,716	4,465
27425	KWBN	1,016,508	893,029	5,892
76268	KWBQ	1,186,772	1,147,638	7,572
66413	KWCH-DT	897,522	896,232	5,913
71549	KWCM-TV	253,609	245,441	1,619
35419	KWDK	4,867,196	4,778,196	31,527
42007	KWES-TV	506,963	506,675	3,343
50194	KWET	125,090	109,790	724
35881	KWEX-DT	2,871,330	2,864,298	18,899
35883	KWGN-TV	4,368,605	4,155,087	27,415
37099	KWHB	1,056,520	1,056,118	6,968
36846	KWHE	1,015,533	885,013	5,839
26231	KWHY-TV	18,512,098	18,476,669	121,909
35096	KWKB	1,167,302	1,156,465	7,630
162115	KWKS	38,196	37,876	250
12522	KWKT-TV	1,631,788	1,626,721	10,733
21162	KWNB-TV	87,130	85,538	564
67347	KWOG	615,169	608,476	4,015
56852	KWPX-TV	4,894,047	4,809,358	31,732
6885	KWQC-TV	1,082,087	1,072,789	7,078
53318	KWSE	85,141	83,532	551
71024	KWSU-TV	824,342	528,984	3,490
25382	KWTV-DT	1,801,405	1,800,115	11,877
35903	KWTX-TV	2,532,542	2,418,595	15,958
593	KWWL	1,127,596	1,116,266	7,365
84410	KWWT	358,813	358,813	2,367
14674	KWYB	91,657	72,951	481
10032	KWYP-DT	163,309	143,265	945
35920	KXAN-TV	3,476,567	3,408,238	22,488
49330	KXAS-TV	8,080,362	8,077,819	53,297
24287	KXGN-TV	14,265	13,906	92
35954	KXII	2,904,223	2,845,456	18,774
55083	KXLA	18,725,198	17,464,578	115,231
35959	KXLF-TV	301,370	256,892	1,695
53847	KXLN-DT	7,293,696	7,293,476	48,122
35906	KXLT-TV	369,632	369,086	2,435
61978	KXLY-TV	884,722	852,475	5,625
55684	KXMA-TV	42,033	41,964	277
55686	KXMB-TV	164,736	160,794	1,061
55685	KXMC-TV	108,096	100,774	665
55683	KXMD-TV	66,215	66,107	436
47995	KXNE-TV	314,798	313,705	2,070
81593	KXNW	707,066	702,866	4,638
35991	KXRM-TV	2,129,262	1,769,815	11,677
1255	KXTF	157,622	157,168	1,037
25048	KXTV	11,761,085	8,212,854	54,188
35994	KXTX-TV	8,029,815	8,026,902	52,961
62293	KXVA	195,284	195,242	1,288
23277	KXVO	1,535,792	1,534,836	10,127
9781	KXXV	2,192,443	2,159,450	14,248
31870	KYAZ	7,248,533	7,248,341	47,825
29086	KYIN	596,722	594,616	3,923
60384	KYLE-TV	367,648	367,562	2,425
33639	KYMA-DT	403,372	400,541	2,643
47974	KYNE-TV	1,089,692	1,089,546	7,189
53820	KYOU-TV	679,167	668,722	4,412
36003	KYTV	1,129,940	1,117,420	7,373
55644	KYTX	956,234	955,262	6,303
13815	KYUR	397,084	395,055	2,607
5237	KYUS-TV	12,525	12,495	82

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
33752	KYVE	317,640	273,973	1,808
55762	KYVV-TV	66,372	65,857	435
25453	KYW-TV	11,769,848	11,559,783	76,271
69531	KZJL	7,244,427	7,244,235	47,797
69571	KZJO	4,814,396	4,758,120	31,394
61062	KZSD-TV	40,148	34,607	228
33079	KZTV	578,385	575,560	3,798
57292	WAAY-TV	1,644,869	1,570,146	10,360
1328	WABC-TV	22,259,872	21,880,695	144,369
4190	WABE-TV	6,138,218	6,116,631	40,358
43203	WABG-TV	352,521	352,047	2,323
17005	WABI-TV	532,053	512,796	3,383
16820	WABM	1,857,082	1,825,082	12,042
23917	WABW-TV	1,106,011	1,104,788	7,289
19199	WACH	1,448,991	1,442,358	9,517
189358	WACP	9,884,531	9,777,819	64,514
23930	WACS-TV	785,954	782,957	5,166
60018	WACX	5,173,569	5,164,028	34,072
361	WACY-TV	992,148	991,650	6,543
455	WADL	4,727,529	4,719,528	31,139
589	WAFB	1,928,550	1,927,924	12,720
591	WAFF	1,642,889	1,574,162	10,386
70689	WAGA-TV	6,879,310	6,793,067	44,821
48305	WAGM-TV	60,320	59,087	390
37809	WAGV	1,555,609	1,240,816	8,187
706	WAIQ	624,285	622,198	4,105
701	WAKA	796,039	790,015	5,213
4143	WALA-TV	1,431,666	1,428,457	9,425
70713	WALB	794,686	793,085	5,233
60536	WAMI-DT	6,013,991	6,013,991	39,680
70852	WAND	1,345,860	1,344,596	8,872
39270	WANE-TV	1,182,627	1,182,599	7,803
72120	WANF	6,907,445	6,833,668	45,089
64546	WAOW	642,013	633,108	4,177
52073	WAPA-TV ²⁷	3,310,492	2,963,089	19,550
49712	WAPT	784,962	783,938	5,172
67792	WAQP	2,125,841	2,121,638	13,999
13206	WATC-DT	6,582,231	6,553,248	43,238
71082	WATE-TV	1,971,491	1,724,804	11,380
22819	WATL	6,759,193	6,686,998	44,121
20287	WATM-TV	868,640	735,080	4,850
11907	WATN-TV	1,792,866	1,789,289	11,806
13989	WAVE	1,998,359	1,989,161	13,124
71127	WAVY-TV	2,171,033	2,171,033	14,324
54938	WAWD	661,368	661,287	4,363
65247	WAWV-TV	684,558	679,421	4,483
12793	WAXN-TV	3,101,362	3,092,322	20,403
65696	WBAL-TV	10,637,240	10,226,692	67,476
74417	WBAY-TV	1,275,960	1,275,160	8,414
71085	WBBH-TV	2,368,347	2,368,347	15,626
65204	WBBJ-TV	654,842	651,262	4,297
9617	WBBM-TV	10,069,057	10,062,626	66,393
9088	WBBZ-TV	1,293,109	1,281,368	8,454
70138	WBDT	3,996,184	3,976,552	26,237
51349	WBEC-TV	5,979,674	5,979,674	39,454
10758	WBFF	9,293,641	9,148,848	60,364
12497	WBFS-TV	5,895,133	5,895,133	38,896
6568	WBGU-TV	1,325,871	1,325,871	8,748
81594	WBIF	315,981	315,981	2,085
84802	WBIH	734,949	717,111	4,731
717	WBIQ	1,649,738	1,621,834	10,701
46984	WBIR-TV	2,083,590	1,795,576	11,847
67048	WBKB-TV	131,202	123,916	818
34167	WBKI	2,220,753	2,204,001	14,542
4692	WBKO	1,079,438	953,403	6,291
76001	WBKP	54,703	54,532	360
68427	WBMM	595,569	595,314	3,928
73692	WBNA	1,803,465	1,770,024	11,679
23337	WBNG-TV	1,400,072	1,023,266	6,752

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
71217	WBNS-TV	3,083,491	3,021,775	19,938
72958	WBNX-TV	3,642,087	3,632,499	23,967
71218	WBOC-TV	880,031	880,031	5,806
71220	WBOY-TV	689,705	605,977	3,998
60850	WBPH-TV	11,348,739	10,115,153	66,740
7692	WBPX-TV	7,354,860	7,283,151	48,054
5981	WBRA-TV	1,705,750	1,657,188	10,934
71221	WBRC	1,976,420	1,942,307	12,815
71225	WBRE-TV	2,912,468	2,263,626	14,935
38616	WBRZ-TV	2,299,439	2,298,465	15,165
82627	WBSF	1,816,355	1,811,602	11,953
30826	WBTW	4,973,067	4,828,412	31,858
66407	WBTW	2,060,897	2,044,444	13,489
16363	WBUI	964,071	964,061	6,361
59281	WBUP	124,208	111,143	733
60830	WBUY-TV	1,568,306	1,566,684	10,337
72971	WBXX-TV	2,270,940	2,098,066	13,843
25456	WBZ-TV	8,524,410	8,283,402	54,654
63153	WCAU	11,821,594	11,646,436	76,843
363	WCAV	1,122,505	960,525	6,338
46728	WCAX-TV	793,321	675,201	4,455
39659	WCBB	985,125	952,373	6,284
10587	WCBD-TV	1,336,923	1,336,923	8,821
12477	WCBI-TV	675,135	673,011	4,441
9610	WCBS-TV	23,434,126	22,837,346	150,681
49157	WCCB	4,088,954	4,017,224	26,506
9629	WCCO-TV	4,237,121	4,228,346	27,899
14050	WCCT-TV	5,898,482	5,384,454	35,527
69544	WCCU	673,293	673,293	4,442
3001	WCCV-TV	3,000,204	2,188,016	14,437
23937	WCES-TV	1,138,637	1,137,146	7,503
65666	WCET	3,245,827	3,234,134	21,339
46755	WCFE-TV	468,278	427,164	2,818
71280	WCHS-TV	1,276,867	1,199,053	7,911
42124	WCIA	809,784	809,348	5,340
711	WCIQ	3,433,774	3,244,161	21,405
71428	WCIU-TV	10,205,649	10,199,522	67,296
9015	WCIV	1,341,404	1,341,404	8,851
42116	WCIX	531,709	527,935	3,483
16993	WCJB-TV	1,080,055	1,080,055	7,126
11125	WCLF	4,707,313	4,706,427	31,053
68007	WCLJ-TV	2,538,971	2,537,989	16,746
50781	WCMH-TV	2,988,929	2,947,009	19,444
9917	WCML	229,956	221,000	1,458
9908	WCMU-TV	717,859	708,880	4,677
9922	WCMV	435,637	421,372	2,780
9913	WCMW	107,851	105,871	699
32326	WCNC-TV	4,347,601	4,262,460	28,124
53734	WCNY-TV	1,328,626	1,263,336	8,335
73642	WCOV-TV	916,080	911,398	6,013
40618	WCPB	612,947	612,947	4,044
59438	WCPO-TV	3,461,834	3,448,166	22,751
10981	WCPX-TV	9,906,756	9,905,251	65,355
71297	WCSC-TV	1,188,482	1,188,482	7,842
39664	WCSH	1,844,256	1,625,773	10,727
69479	WCTE	645,441	572,887	3,780
18334	WCTI-TV	1,741,252	1,734,851	11,447
31590	WCTV	1,083,799	1,083,709	7,150
33081	WCTX	7,999,974	7,453,383	49,177
65684	WCVB-TV	8,334,723	8,171,970	53,919
9987	WCVE-TV	1,894,231	1,892,374	12,486
83304	WCVI-TV	41,004	40,978	270
34204	WCVN-TV	2,242,264	2,237,912	14,766
9989	WCVW	1,662,141	1,660,801	10,958
73042	WCWF	1,181,564	1,180,880	7,791
35385	WCWG	3,895,811	3,546,156	23,398
29712	WCWJ	1,938,352	1,938,263	12,789
73264	WCWN	1,917,787	1,630,664	10,759
2455	WCYB-TV	2,296,374	1,447,129	9,548

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
11291	WDAF-TV	2,724,533	2,722,049	17,960
21250	WDAM-TV	507,937	495,331	3,268
22129	WDAY-TV	389,109	389,023	2,567
22124	WDAZ-TV	155,202	154,877	1,022
71325	WDBB	1,874,003	1,841,150	12,148
71326	WDBD	924,445	923,304	6,092
71329	WDBJ	1,603,364	1,421,509	9,379
51567	WDCA	8,945,253	8,890,093	58,657
16530	WDCQ-TV	1,226,421	1,226,397	8,092
30576	WDCW	9,008,590	8,971,597	59,195
54385	WDEF-TV	1,818,758	1,592,644	10,508
32851	WDFX-TV	343,408	343,096	2,264
43846	WDHN	454,174	453,945	2,995
71338	WDIO-DT	345,803	332,242	2,192
714	WDIQ	674,543	625,633	4,128
53114	WDIV-TV	5,555,564	5,555,436	36,655
71427	WDJT-TV	3,315,464	3,306,632	21,817
39561	WDKA	640,692	640,230	4,224
64017	WDKY-TV	1,280,920	1,245,717	8,219
67893	WDLI-TV	4,131,639	4,098,980	27,045
72335	WDPB	652,694	652,694	4,306
83740	WDPM-DT	1,493,282	1,491,552	9,841
1283	WDPN-TV	12,164,952	12,033,746	79,399
6476	WDPX-TV	7,354,860	7,283,151	48,054
28476	WDRB	2,166,593	2,149,625	14,183
12171	WDSC-TV	4,131,441	4,131,441	27,259
17726	WDSE	335,589	320,243	2,113
71353	WDSI-TV	1,155,212	1,094,624	7,222
71357	WDSU	1,746,300	1,746,300	11,522
7908	WDTI	2,314,404	2,313,996	15,268
65690	WDTN	3,998,815	3,979,357	26,256
70592	WDTV	554,217	513,260	3,386
25045	WDVM-TV	3,360,750	2,931,025	19,339
4110	WDWL	2,449,731	2,192,227	14,464
49421	WEAO	3,954,789	3,936,003	25,970
71363	WEAR-TV	1,662,799	1,662,271	10,968
7893	WEAU	1,031,280	993,529	6,555
61003	WEBA-TV	652,051	645,245	4,257
19561	WECN	2,551,597	2,296,482	15,152
48666	WECT	1,284,078	1,284,078	8,472
13602	WEDH	5,419,331	4,792,684	31,622
13607	WEDN	3,520,804	2,654,657	17,515
69338	WEDQ	6,372,341	6,354,538	41,927
21808	WEDU	6,372,341	6,354,538	41,927
13594	WEDW	21,942,405	21,529,106	142,049
13595	WEDY	5,419,331	4,792,684	31,622
24801	WEEK-TV	730,054	729,949	4,816
6744	WEFS	4,115,849	4,115,849	27,156
24215	WEHT	854,000	838,936	5,535
721	WEIQ	1,138,095	1,137,690	7,506
18301	WEIU-TV	442,120	442,040	2,917
69271	WEKW-TV	1,306,163	800,635	5,283
60825	WELF-TV	1,547,836	1,455,263	9,602
26602	WELU	2,052,918	1,847,568	12,190
40761	WEMT	1,708,704	1,169,182	7,714
69237	WENH-TV	4,865,355	4,679,954	30,878
71508	WENY-TV	636,768	501,692	3,310
83946	WEPH	604,510	602,977	3,978
81508	WEPX-TV	945,425	945,425	6,238
25738	WESH	4,917,201	4,906,261	32,372
65670	WETA-TV	9,177,186	9,112,861	60,127
69944	WETK	681,830	571,729	3,772
60653	WETM-TV	844,248	745,266	4,917
18252	WETP-TV	2,251,212	1,940,383	12,803
2709	WEUX	396,788	387,527	2,557
72041	WEVV-TV	751,428	750,047	4,949
59441	WEWS-TV	4,098,329	4,061,663	26,799
72052	WEYI-TV	3,802,069	3,734,694	24,642
72054	WFAA	8,238,058	8,226,984	54,282

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
81669	WFBD	919,012	918,335	6,059
69532	WFDC-DT	9,008,590	8,971,597	59,195
10132	WFFF-TV	644,230	566,681	3,739
25040	WFFT-TV	1,133,445	1,133,031	7,476
11123	WFGC	3,402,762	3,402,762	22,451
6554	WFGX	1,631,714	1,631,224	10,763
13991	WFIE	742,941	741,771	4,894
715	WFIQ	550,070	548,067	3,616
64592	WFLA-TV	6,656,303	6,639,930	43,810
22211	WFLD	10,111,733	10,105,397	66,675
72060	WFLI-TV	1,357,801	1,252,063	8,261
39736	WFLX	6,299,680	6,299,680	41,565
72062	WFMJ-TV	4,291,547	3,802,286	25,087
72064	WFMY-TV	5,399,787	5,364,129	35,393
39884	WFMZ-TV	11,348,739	10,115,153	66,740
83943	WFNA	1,511,431	1,509,839	9,962
47902	WFOR-TV	5,952,062	5,952,062	39,272
11909	WFOX-TV	1,881,740	1,881,740	12,416
40626	WFPT	6,479,421	6,072,020	40,063
21245	WFPX-TV	2,980,937	2,976,800	19,641
25396	WFQX-TV	537,914	533,910	3,523
9635	WFRV-TV	1,313,825	1,300,885	8,583
53115	WFSB	4,799,110	4,417,573	29,147
6093	WFSG	403,233	403,173	2,660
21801	WFSU-TV	592,693	592,676	3,910
11913	WFTC	4,159,690	4,144,073	27,343
64588	WFTS-TV	6,213,173	6,213,039	40,994
16788	WFTT-TV	5,291,296	5,291,296	34,912
72076	WFTV	4,707,940	4,707,940	31,063
70649	WFTX-TV	2,076,721	2,076,721	13,702
60553	WFTY-DT	5,838,625	5,724,691	37,772
25395	WFUP	235,473	234,457	1,547
60555	WFUT-DT	21,842,105	21,428,169	141,383
22108	WFWA	1,071,881	1,071,733	7,071
9054	WFXB	1,448,018	1,447,713	9,552
3228	WFXG	1,126,109	1,115,208	7,358
70815	WFXL	792,863	786,514	5,189
19707	WFXP	556,627	543,130	3,584
24813	WFXR	1,418,873	1,283,217	8,467
6463	WFXT	8,044,623	7,951,492	52,464
22245	WFXU	225,675	225,675	1,489
43424	WFXV	682,282	587,673	3,877
25236	WFXW	240,198	240,193	1,585
41397	WFYI	2,614,535	2,613,865	17,246
53930	WGAL	6,592,850	5,851,154	38,606
2708	WGBA-TV	1,219,315	1,218,972	8,043
24314	WGBC	233,035	232,798	1,536
72099	WGBH-TV	8,264,395	8,151,180	53,781
12498	WGBD-TV	9,984,682	9,984,501	65,878
11113	WGBP-TV	1,964,065	1,956,753	12,911
72098	WGBX-TV	8,354,289	8,184,570	54,002
72096	WGBY-TV	4,556,980	3,838,887	25,329
62388	WGCN	1,789,951	1,789,951	11,810
54275	WGEM-TV	340,572	335,705	2,215
27387	WGEN-TV	47,451	47,451	313
7727	WGFL	958,665	958,665	6,325
25682	WGGB-TV	3,501,457	3,092,700	20,406
11027	WGGN-TV	4,010,515	3,987,566	26,310
9064	WGGT-TV	2,978,169	2,919,596	19,263
72106	WGHP	4,716,324	4,663,025	30,767
710	WGIQ	367,358	367,140	2,422
12520	WGMB-TV	1,815,089	1,814,919	11,975
25683	WGME-TV	1,562,382	1,391,898	9,184
24618	WGNM	765,295	764,308	5,043
72119	WGNO	1,737,340	1,737,340	11,463
9762	WGNT	2,218,861	2,218,861	14,640
72115	WGN-TV	10,139,791	10,133,994	66,864
40619	WGPT	570,828	347,754	2,294
65074	WGPX-TV	3,063,562	3,053,879	20,149

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
64547	WGRZ	1,896,029	1,833,959	12,100
63329	WGTA	1,174,842	1,134,460	7,485
66285	WGTE-TV	2,250,689	2,250,689	14,850
59279	WGTQ	114,517	109,995	726
59280	WGTU	369,755	364,263	2,403
23948	WGTV	6,872,895	6,793,292	44,822
7623	WGTW-TV	830,912	830,818	5,482
24783	WGVK	2,565,756	2,563,031	16,911
24784	WGVU-TV	1,943,807	1,894,218	12,498
21536	WGWG	1,146,502	1,146,502	7,565
56642	WGWV	1,742,591	1,714,951	11,315
58262	WGXA	799,532	798,664	5,270
73371	WHAM-TV	1,381,792	1,333,395	8,798
32327	WHAS-TV	2,065,124	2,034,746	13,425
6096	WHA-TV	1,715,866	1,709,075	11,276
13950	WHBF-TV	1,726,114	1,713,500	11,306
12521	WHBQ-TV	1,735,050	1,714,081	11,310
10894	WHBR	1,425,293	1,424,691	9,400
65128	WHDF	1,720,614	1,666,798	10,998
72145	WHDH	7,993,816	7,899,325	52,120
83929	WHDZ	6,334,757	6,334,757	41,797
70041	WHEC-TV	1,322,761	1,278,323	8,434
67971	WHFT-TV	5,976,793	5,976,793	39,435
41458	WHIO-TV	4,041,602	4,033,560	26,613
713	WHIQ	1,383,801	1,329,761	8,774
61216	WHIZ-TV	962,141	885,771	5,844
18780	WHLA-TV	569,415	530,529	3,500
48668	WHLT	481,036	479,959	3,167
24582	WHLV-TV	4,739,820	4,739,820	31,273
37102	WHMB-TV	3,187,327	3,126,458	20,628
61004	WHMC	838,228	838,228	5,531
36117	WHME-TV	1,490,612	1,490,518	9,834
37106	WHNO	1,592,553	1,592,553	10,508
72300	WHNS	2,753,561	2,462,848	16,250
48693	WHNT-TV	1,687,347	1,607,863	10,609
66221	WHO-DT	1,226,093	1,209,327	7,979
6866	WHOI	716,035	715,956	4,724
72313	WHP-TV	4,219,869	3,695,568	24,383
51980	WHPX-TV	5,666,126	5,176,293	34,153
73036	WHRM-TV	537,971	535,112	3,531
25932	WHRO-TV	2,261,464	2,261,381	14,921
68058	WHSG-TV	6,744,093	6,678,392	44,064
4688	WHSV-TV	894,602	760,620	5,019
9990	WHTJ	867,445	743,025	4,902
72326	WHTM-TV	3,349,178	2,923,354	19,288
11117	WHTN	2,283,942	2,273,175	14,998
27772	WHUT-TV	8,785,956	8,745,663	57,704
18793	WHWC-TV	1,205,932	1,152,576	7,605
72338	WHYY-TV	10,984,166	10,590,279	69,875
5360	WIAT	1,959,076	1,921,566	12,678
63160	WIBW-TV	1,312,372	1,263,123	8,334
25684	WICD	1,220,886	1,219,775	8,048
25686	WICS	1,060,412	1,058,572	6,984
24970	WICU-TV	704,263	654,470	4,318
62210	WICZ-TV	1,208,124	932,840	6,155
18410	WIDP	2,258,204	2,022,801	13,346
26025	WIFS	1,664,757	1,659,814	10,951
720	WIIQ	330,593	326,759	2,156
68939	WILL-TV	1,148,587	1,125,681	7,427
6863	WILX-TV	3,505,808	3,321,258	21,914
22093	WINK-TV	2,135,187	2,135,187	14,088
67787	WINM	1,035,236	1,004,998	6,631
41314	WINP-TV	2,918,791	2,870,939	18,942
3646	WIPB	2,098,072	2,097,589	13,840
48408	WIPL	902,112	849,374	5,604
53863	WIPM-TV ¹	2,018,636	1,743,992	740
53859	WIPR-TV ¹	3,164,369	2,988,035	19,715
10253	WIPX-TV	2,538,971	2,537,989	16,746
39887	WIRS ¹²	962,531	803,553	2,946

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
71336	WIRT-DT	125,282	123,221	813
13990	WIS	2,873,204	2,819,721	18,605
65143	WISC-TV	1,816,917	1,779,975	11,744
13960	WISE-TV	1,105,600	1,105,444	7,294
39269	WISH-TV	3,141,430	3,093,806	20,413
65680	WISN-TV	3,041,677	3,036,957	20,038
73083	WITF-TV	2,532,625	2,299,838	15,174
73107	WITI	3,149,773	3,140,719	20,722
594	WITN-TV	1,942,458	1,927,751	12,719
61005	WITV	1,002,380	1,002,380	6,614
7780	WIVB-TV	1,911,934	1,834,562	12,104
11260	WIVT	831,941	612,317	4,040
60571	WIWN	3,387,206	3,370,697	22,240
62207	WIYC	673,128	670,480	4,424
73120	WJAC-TV	2,152,162	1,855,359	12,242
10259	WJAL	9,654,785	9,309,845	61,426
50780	WJAR	7,602,846	7,447,435	49,138
35576	WJAX-TV	1,909,321	1,909,321	12,598
27140	WJBF	1,669,785	1,652,861	10,906
73123	WJBK	5,840,177	5,804,131	38,296
37174	WJCL	1,031,857	1,031,857	6,808
73130	WJCT	1,893,148	1,892,490	12,487
29719	WJEB-TV	1,880,192	1,880,192	12,406
65749	WJET-TV	711,412	685,375	4,522
7651	WJFB	2,745,573	2,734,787	18,044
49699	WJFW-TV	281,148	271,274	1,790
73136	WJHG-TV	912,881	905,531	5,975
57826	WJHL-TV	2,035,505	1,463,539	9,656
68519	WJKT	645,594	645,161	4,257
1051	WJLA-TV	9,654,785	9,314,754	61,459
86537	WJLP	22,694,994	22,426,423	147,970
9630	WJMN-TV	158,494	151,938	1,002
61008	WJPM-TV	587,058	586,836	3,872
58340	WJPX ^{6 10 12}	2,861,004	2,653,740	17,509
21735	WJRT-TV	2,831,612	2,583,368	17,045
23918	WJSP-TV	4,678,958	4,643,904	30,640
41210	WJTC	1,517,180	1,516,056	10,003
48667	WJTV	966,513	958,676	6,325
73150	WJW	3,969,148	3,895,876	25,705
61007	WJWJ-TV	1,180,652	1,180,652	7,790
58342	WJWN-TV ⁶	1,830,695	1,568,858	2,946
53116	WJXT	1,899,110	1,899,110	12,530
11893	WJXX	1,888,910	1,888,113	12,458
32334	WJYS	9,820,848	9,820,831	64,798
25455	WJZ-TV	10,637,240	10,228,751	67,489
73152	WJZY	4,965,077	4,831,865	31,881
64983	WKAQ-TV ³	3,259,225	2,914,322	1,101
6104	WKAR-TV	1,713,640	1,709,038	11,276
34171	WKAS	522,877	496,277	3,274
51570	WKBD-TV	5,180,191	5,179,980	34,178
73153	WKBN-TV	4,870,043	4,522,748	29,841
13929	WKBS-TV	1,054,914	914,205	6,032
74424	WKBT-DT	905,659	860,444	5,677
54176	WKBW-TV	2,261,221	2,175,654	14,355
53465	WKCF	5,109,221	5,107,692	33,701
73155	WKEF	3,860,944	3,850,405	25,405
34177	WKGB-TV	444,266	442,639	2,921
34196	WKHA	475,212	372,027	2,455
34207	WKLE	918,947	911,337	6,013
34212	WKMA-TV	558,464	558,150	3,683
71293	WKMG-TV	4,643,692	4,643,692	30,639
34195	WKMJ-TV	1,572,974	1,565,579	10,330
34202	WKMR	457,241	422,772	2,789
34174	WKMU	339,477	339,064	2,237
42061	WKNO	1,649,295	1,647,327	10,869
83931	WKNX-TV	1,778,483	1,548,751	10,219
34205	WKOH	591,189	584,484	3,856
67869	WKOI-TV	3,996,184	3,976,552	26,237
34211	WKON	1,170,361	1,163,470	7,677

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
18267	WKOP-TV	1,641,367	1,465,642	9,670
64545	WKOW	1,999,166	1,978,160	13,052
21432	WKPC-TV	1,620,977	1,613,304	10,645
65758	WKPD	277,245	276,367	1,823
34200	WKPI-TV	552,999	432,287	2,852
27504	WKPT-TV	1,107,992	876,999	5,786
58341	WKPV ¹⁰	981,832	762,182	2,946
11289	WKRC-TV	3,412,677	3,359,970	22,169
73187	WKRQ-TV	1,661,088	1,660,222	10,954
73188	WKRQ-TV	2,843,550	2,823,383	18,629
34222	WKSO-TV	675,800	663,810	4,380
40902	WKTC	1,422,142	1,421,788	9,381
60654	WKTV	1,566,267	1,340,030	8,842
73195	WKYC	4,162,460	4,109,739	27,116
24914	WKYT-TV	1,263,314	1,247,201	8,229
71861	WKYU-TV	447,402	444,471	2,933
34181	WKZT-TV	1,092,295	1,075,603	7,097
18819	WLAE-TV	1,489,518	1,489,518	9,828
36533	WLAI	4,230,811	4,195,529	27,682
2710	WLAX	480,917	455,361	3,004
68542	WLBT	930,984	929,897	6,135
39644	WLBZ	374,046	364,463	2,405
69328	WLED-TV	333,929	175,095	1,155
63046	WLEF-TV	201,828	200,259	1,321
73203	WLEX-TV	1,037,124	1,032,416	6,812
37806	WLFB	756,510	656,110	4,329
37808	WLFG	1,555,609	1,240,816	8,187
73204	WLFI-TV	2,422,930	2,397,991	15,822
73205	WLFL	4,154,373	4,151,842	27,394
19777	WLII-DT ⁴⁸	2,472,430	2,284,000	15,070
37503	WLIO	1,076,204	1,052,712	6,946
38336	WLIW	21,331,793	21,007,396	138,607
27696	WLJC-TV	1,433,034	1,317,702	8,694
71645	WLJT-DT	382,232	381,417	2,517
53939	WLKY	2,035,700	2,028,397	13,383
11033	WLLA	2,204,047	2,203,715	14,540
1222	WLMA	1,681,703	1,678,515	11,075
17076	WLMB	2,820,328	2,813,733	18,565
68518	WLMT	1,739,879	1,737,416	11,463
22591	WLNE-TV	6,880,185	6,815,475	44,969
74420	WLNS-TV	4,230,811	4,195,529	27,682
73206	WLNY-TV	7,829,527	7,746,153	51,109
84253	WLOO	897,764	896,755	5,917
56537	WLOS	3,337,211	2,748,224	18,133
37732	WLOV-TV	608,778	606,994	4,005
13995	WLOX	1,236,798	1,224,809	8,081
38586	WLPB-TV	1,263,410	1,263,379	8,336
73189	WLPX-TV	1,012,910	963,892	6,360
66358	WLRN-TV	6,010,422	6,010,422	39,657
73226	WLS-TV	10,333,090	10,326,952	68,137
73230	WLTN-DT	5,988,029	5,988,029	39,509
37176	WLTX	1,614,789	1,611,719	10,634
37179	WLTZ	738,023	734,057	4,843
21259	WLUC-TV	103,185	95,367	629
4150	WLUK-TV	1,237,211	1,236,394	8,158
73238	WLVI	7,993,816	7,899,325	52,120
36989	WLVT-TV	11,348,739	10,115,153	66,740
3978	WLWC	3,398,164	3,257,998	21,496
46979	WLWT	3,499,610	3,489,652	23,025
54452	WLXI	3,243,843	3,015,382	19,895
55350	WLYH	3,349,178	2,923,354	19,288
43192	WMAB-TV	389,089	384,767	2,539
43170	WMAE-TV	692,999	663,737	4,379
43197	WMAH-TV	1,302,245	1,301,790	8,589
43176	WMAO-TV	333,490	333,321	2,199
47905	WMAQ-TV	10,069,653	10,068,069	66,429
59442	WMAR-TV	10,025,750	9,879,744	65,187
43184	WMAU-TV	637,434	631,358	4,166
43193	WMAV-TV	1,018,601	1,018,556	6,720

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
43169	WMAW-TV	731,384	716,614	4,728
46991	WMAZ-TV	1,238,176	1,180,117	7,786
66398	WMBB	990,632	964,744	6,365
43952	WMBC-TV	22,446,503	21,778,765	143,696
42121	WMBD-TV	720,722	720,669	4,755
83969	WMBF-TV	526,232	526,232	3,472
60829	WMCB-TV	644,916	641,833	4,235
9739	WMCN-TV	10,984,166	10,590,279	69,875
19184	WMC-TV	2,057,112	2,053,563	13,549
189357	WMDE	6,933,795	6,802,466	44,883
73255	WMDN	259,822	259,616	1,713
16455	WMDT	790,315	790,315	5,214
39656	WMEA-TV	965,365	911,355	6,013
39648	WMEB-TV	411,335	396,677	2,617
70537	WMEC	199,187	198,698	1,311
39649	WMED-TV	28,850	27,884	184
39662	WMEM-TV	66,343	64,625	426
41893	WMFD-TV	1,637,011	1,379,386	9,101
41436	WMFP	6,230,964	5,959,061	39,318
61111	WMGM-TV	830,912	830,818	5,482
43847	WMGT-TV	614,625	614,040	4,051
73263	WMHT	1,729,302	1,559,066	10,287
68545	WMLW-TV	1,863,951	1,863,679	12,297
53819	WMOR-TV	6,400,456	6,400,333	42,229
81503	WMOW	122,110	106,904	705
65944	WMPB	8,059,368	7,940,127	52,389
43168	WMPN-TV	843,756	841,772	5,554
65942	WMPY	9,500,117	9,442,413	62,301
60827	WMPV-TV	1,565,537	1,564,599	10,323
10221	WMSN-TV	2,030,916	2,010,636	13,266
2174	WMTJ ¹¹	2,764,573	2,492,464	16,445
6870	WMTV	1,628,641	1,625,206	10,723
73288	WMTW	2,041,342	1,737,673	11,465
23935	WMUM-TV	926,604	921,419	6,080
73292	WMUR-TV	5,652,739	5,453,759	35,984
42663	WMVS	3,216,887	3,155,770	20,822
42665	WMTV	3,216,887	3,155,770	20,822
81946	WMWC-TV	935,338	912,437	6,020
56548	WMYA-TV	1,808,659	1,723,755	11,373
74211	WMYD	5,840,155	5,839,880	38,532
20624	WMYT-TV	4,965,077	4,831,865	31,881
25544	WMYV	4,406,813	4,379,408	28,895
73310	WNAB	2,600,886	2,591,235	17,097
73311	WNAC-TV	7,817,084	7,459,610	49,219
47535	WNBC	23,283,577	22,722,761	149,925
83965	WNBW-DT	1,557,530	1,550,637	10,231
72307	WNCB	665,079	658,994	4,348
50782	WNCN	4,201,973	4,186,944	27,625
57838	WNCT-TV	2,034,787	1,975,930	13,037
41674	WNDU-TV	1,901,588	1,870,311	12,340
28462	WNDY-TV	3,141,430	3,093,806	20,413
71928	WNED-TV	1,408,141	1,390,745	9,176
60931	WNEH	1,389,794	1,383,193	9,126
41221	WNEM-TV	1,437,726	1,434,104	9,462
49439	WNEO	3,343,598	3,265,373	21,545
73318	WNEP-TV	3,472,501	2,879,994	19,002
18795	WNET	22,428,695	21,915,470	144,598
51864	WNEU	7,676,529	7,606,661	50,189
23942	WNGH-TV	6,461,522	6,281,764	41,447
67802	WNIN	907,713	891,200	5,880
41671	WNIT	1,335,767	1,335,767	8,813
48457	WNJB	22,145,547	21,374,668	141,030
48477	WNJN	22,145,547	21,374,668	141,030
48481	WNJS	7,729,626	7,710,589	50,874
48465	WNJT	7,729,626	7,710,589	50,874
73333	WNJU	23,283,577	22,722,761	149,925
73336	WNJX-TV ²	1,446,990	1,265,826	905
61217	WNKY	414,184	412,652	2,723
71905	WNLO	1,911,934	1,834,562	12,104

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
4318	WNMU	178,504	177,692	1,172
73344	WNNE	801,186	684,501	4,516
54280	WNOL-TV	1,730,074	1,730,074	11,415
71676	WNPB-TV	2,094,971	1,923,306	12,690
62137	WNPI-DT	159,208	154,143	1,017
41398	WNPT	2,692,492	2,657,273	17,533
28468	WNPX-TV	2,494,581	2,470,662	16,301
61009	WNSC-TV	2,860,897	2,853,300	18,826
61010	WNTV	2,775,252	2,572,161	16,971
16539	WNTZ-TV	328,336	327,661	2,162
7933	WNUV	9,944,268	9,735,378	64,234
9999	WNVG	867,445	743,025	4,902
10019	WNVV	1,894,231	1,892,374	12,486
73354	WNWO-TV	2,915,507	2,915,507	19,237
136751	WNYA	1,932,105	1,656,014	10,926
30303	WNYB	1,784,805	1,758,025	11,599
6048	WNYE-TV	20,693,079	20,445,674	134,901
34329	WNYI	1,609,642	1,329,569	8,772
67784	WNYO-TV	1,449,480	1,428,169	9,423
73363	WNYT	1,691,742	1,539,006	10,154
22206	WNYW	21,377,740	21,043,915	138,848
69618	WOAI-TV	3,063,753	3,050,610	20,128
66804	WOAY-TV	536,548	414,046	2,732
41225	WOFL	4,897,034	4,891,577	32,275
70651	WOGX	1,262,333	1,262,333	8,329
8661	WOI-DT	1,278,698	1,277,340	8,428
39746	WOIO	3,819,462	3,739,439	24,673
71725	WOLE-DT ⁴	1,581,955	1,411,809	5,385
73375	WOLF-TV	3,025,477	2,531,097	16,700
60963	WOLO-TV	2,854,959	2,814,886	18,573
36838	WOOD-TV	2,637,147	2,631,110	17,360
67602	WOPX-TV	4,677,102	4,676,992	30,859
64865	WORA-TV ^{3 13}	3,172,055	2,933,387	19,354
73901	WORO-DT	2,847,102	2,661,536	17,561
60357	WOST	1,055,465	918,659	6,061
66185	WOSU-TV	3,073,523	3,013,857	19,885
131	WOTF-TV	4,204,625	4,204,625	27,742
10212	WOTV	2,493,328	2,492,908	16,448
50147	WOUB-TV	739,667	721,384	4,760
50141	WOUC-TV	1,680,457	1,618,502	10,679
23342	WOWK-TV	1,098,995	1,028,502	6,786
65528	WOWT	1,516,978	1,514,052	9,990
31570	WPAN	1,392,393	1,392,261	9,186
51988	WPBF	3,601,603	3,601,603	23,763
21253	WPBN-TV	452,157	440,310	2,905
62136	WPBS-TV	332,147	296,972	1,959
13456	WPBT	5,976,331	5,976,331	39,432
13924	WPCB-TV	2,920,794	2,802,648	18,492
64033	WPCH-TV	6,826,973	6,747,200	44,518
4354	WPCT	207,688	207,286	1,368
17012	WPDE-TV	1,845,347	1,838,747	12,132
52527	WPEC	6,332,850	6,332,850	41,784
84088	WPFO	1,390,230	1,272,952	8,399
54728	WPGA-TV	575,813	575,578	3,798
60820	WPGD-TV	2,787,190	2,772,517	18,293
73875	WPGH-TV	3,209,933	3,099,658	20,452
2942	WPGX	448,453	445,686	2,941
73879	WPHL-TV	10,944,731	10,756,717	70,973
73881	WPIX	22,259,872	21,818,842	143,961
69880	WPKD-TV	3,366,547	3,181,216	20,990
53113	WPLG	6,165,413	6,165,413	40,679
11906	WPMI-TV	1,609,741	1,609,491	10,619
10213	WPMT	2,532,625	2,299,838	15,174
18798	WPNE-TV	1,210,150	1,209,366	7,979
73907	WPNT	3,148,917	3,050,465	20,127
28480	WPPT	11,348,739	10,115,153	66,740
51984	WPPX-TV	8,429,105	8,212,096	54,183
47404	WPRI-TV	7,754,340	7,480,561	49,357
51991	WPSD-TV	852,232	848,332	5,597

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
12499	WPSG	11,342,493	11,068,585	73,031
66219	WPSU-TV	1,016,983	842,529	5,559
73905	WPTA	1,136,029	1,135,873	7,494
25067	WPTD	3,535,155	3,522,151	23,239
25065	WPTO	3,080,289	3,066,947	20,236
59443	WPTV-TV	6,414,108	6,414,108	42,320
57476	WPTZ	801,186	684,501	4,516
8616	WPVI-TV	11,997,071	11,834,791	78,086
48772	WPWR-TV	10,111,733	10,105,397	66,675
51969	WPXA-TV	7,486,662	7,341,812	48,441
71236	WPXC-TV	1,812,411	1,812,329	11,958
5800	WPXD-TV	5,357,614	5,357,504	35,349
37104	WPXE-TV	3,105,562	3,094,581	20,418
48406	WPXG-TV	2,760,323	2,697,351	17,797
73312	WPXH-TV	1,558,487	1,543,110	10,181
73910	WPXI	3,270,399	3,179,997	20,982
2325	WPXJ-TV	2,383,753	2,319,308	15,303
52628	WPXK-TV	1,897,932	1,672,850	11,037
21729	WPXL-TV	1,738,354	1,738,354	11,470
48608	WPXM-TV	5,673,283	5,673,283	37,432
73356	WPXN-TV	22,193,311	21,756,322	143,548
27290	WPXP-TV	6,117,297	6,117,297	40,362
50063	WPXQ-TV	3,398,164	3,257,998	21,496
70251	WPXR-TV	1,361,522	1,199,794	7,916
40861	WPXS	2,313,093	2,228,599	14,704
53065	WPXT	1,058,317	1,005,248	6,633
37971	WPXU-TV	764,835	764,835	5,046
67077	WPXV-TV	1,997,620	1,997,620	13,180
74091	WPXW-TV	8,918,745	8,866,240	58,499
21726	WPXX-TV	1,563,942	1,560,675	10,297
73319	WQAD-TV	1,077,293	1,065,179	7,028
65130	WQCW	1,234,953	1,165,995	7,693
71561	WQEC	177,193	175,191	1,156
41315	WQED	3,491,971	3,385,114	22,335
3255	WQHA	2,936,821	2,543,288	16,781
60556	WQHS-DT	3,982,203	3,936,334	25,972
53716	WQLN	573,688	553,172	3,650
52075	WQMY	403,099	246,363	1,626
64550	WQOW	383,460	372,929	2,461
5468	WQPT-TV	928,221	922,909	6,089
64690	WQPX-TV	1,624,976	1,207,503	7,967
52408	WQRF-TV	1,384,090	1,360,850	8,979
2175	WQTO ¹¹	2,533,848	1,714,503	4,010
8688	WRAL-TV	4,258,430	4,255,027	28,075
10133	WRAY-TV	4,701,102	4,682,210	30,893
64611	WRAZ	4,206,845	4,204,439	27,741
136749	WRBJ-TV	1,029,422	1,026,759	6,775
3359	WRBL	1,573,722	1,534,121	10,122
57221	WRBU	2,964,043	2,960,986	19,537
54940	WRBW	4,929,252	4,926,807	32,507
59137	WRCB	1,674,932	1,436,942	9,481
47904	WRC-TV	9,040,003	8,996,367	59,358
54963	WRDC	4,380,924	4,374,069	28,860
55454	WRDQ	4,765,929	4,765,929	31,446
73937	WRDW-TV	1,630,465	1,580,144	10,426
66174	WREG-TV	1,645,112	1,638,826	10,813
61011	WRET-TV	2,775,252	2,572,161	16,971
73940	WREX	2,367,561	2,071,361	13,667
54443	WRFB ¹³	2,361,435	2,105,790	1,101
73942	WRGB	1,773,206	1,559,637	10,290
411	WRGT-TV	3,563,572	3,528,799	23,283
74416	WRIC-TV	2,264,724	2,197,233	14,497
61012	WRJA-TV	1,227,284	1,220,205	8,051
412	WRLH-TV	2,215,949	2,152,568	14,203
61013	WRLK-TV	1,268,677	1,267,713	8,364
43870	WRLM	3,954,789	3,936,003	25,970
74156	WRNN-TV	21,146,732	20,904,564	137,928
73964	WROC-TV	1,210,157	1,192,546	7,868
159007	WRPT	108,521	108,009	713

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
20590	WRPX-TV	2,980,937	2,976,800	19,641
62009	WRSP-TV	1,062,091	1,060,251	6,996
40877	WRTV	3,148,448	3,125,475	20,622
15320	WRUA	2,624,204	2,339,222	15,434
71580	WRXY-TV	2,114,529	2,114,529	13,952
48662	WSAV-TV	1,094,897	1,094,884	7,224
6867	WSAW-TV	657,843	651,328	4,297
36912	WSAZ-TV	1,173,019	1,103,266	7,279
56092	WSBE-TV	8,044,866	7,776,757	51,311
73982	WSBK-TV	7,834,658	7,766,985	51,247
72053	WSBS-TV	47,386	47,386	313
73983	WSBT-TV	1,790,673	1,780,628	11,749
23960	WSB-TV	6,772,503	6,695,450	44,177
69446	WSCG	961,649	961,649	6,345
64971	WSCV	6,029,382	6,029,382	39,782
70536	WSEC	517,830	517,364	3,414
49711	WSEE-TV	585,062	562,271	3,710
21258	WSES	1,905,067	1,866,312	12,314
73988	WSET-TV	1,587,650	1,345,990	8,881
13993	WSFA	1,206,335	1,168,069	7,707
11118	WSFJ-TV	1,911,871	1,902,328	12,552
10203	WSFL-TV	5,890,244	5,890,244	38,864
72871	WSFX-TV	1,088,964	1,088,964	7,185
73999	WSIL-TV	650,734	647,093	4,270
4297	WSIU-TV	994,418	936,746	6,181
74007	WSJV	1,686,953	1,680,493	11,088
78908	WSKA	530,610	416,302	2,747
74034	WSKG-TV	866,172	616,130	4,065
76324	WSKY-TV	2,003,325	2,002,894	13,215
776220	WSLN	3,269,796	3,020,118	19,927
57840	WSLS-TV	1,436,974	1,276,869	8,425
21737	WSMH	2,350,370	2,335,477	15,409
41232	WSMV-TV	2,883,773	2,837,323	18,721
70119	WSNS-TV	10,069,653	10,068,069	66,429
74070	WSOC-TV	4,156,321	4,085,565	26,957
66391	WSPA-TV	3,717,232	3,549,667	23,421
64352	WSPX-TV	1,285,581	1,167,040	7,700
17611	WSRE	1,490,766	1,489,946	9,831
63867	WSST-TV	312,974	312,260	2,060
60341	WSTE-DT	3,284,058	3,220,155	21,247
21252	WSTM-TV	1,437,543	1,367,590	9,023
11204	WSTR-TV	3,424,743	3,411,973	22,512
19776	WSUR-DT ⁸	3,276,102	3,182,722	5,385
2370	WSVI	41,004	41,004	271
63840	WSVN	6,165,386	6,165,386	40,679
73374	WSWB	1,516,774	1,088,360	7,181
28155	WSWG	389,103	389,030	2,567
71680	WSWP-TV	849,038	633,378	4,179
74094	WSYM-TV	1,607,593	1,607,277	10,605
73113	WSYR-TV	1,314,500	1,226,575	8,093
40758	WSYT	1,962,530	1,731,744	11,426
56549	WSYX	2,871,413	2,825,664	18,644
65681	WTAE-TV	2,985,875	2,865,692	18,908
23341	WTAJ-TV	1,158,024	925,907	6,109
4685	WTAP-TV	489,083	469,004	3,094
416	WTAT-TV	1,284,148	1,284,148	8,473
67993	WTBY-TV	16,997,114	16,897,718	111,491
29715	WTCE-TV	2,964,583	2,964,583	19,560
65667	WTCI	1,276,295	1,159,269	7,649
67786	WTCT	590,643	586,819	3,872
28954	WTCV ⁵⁹	2,861,004	2,653,740	17,509
74422	WTEN	1,913,356	1,621,808	10,701
9881	WTGL	4,516,827	4,516,827	29,802
27245	WTGS	1,064,292	1,064,066	7,021
70655	WTHI-TV	966,268	914,388	6,033
70162	WTHR	3,175,603	3,122,761	20,604
147	WTIC-TV	5,397,501	4,767,795	31,458
26681	WTIN-TV ⁷	3,277,279	3,162,469	905
66536	WTIU	1,690,704	1,689,678	11,148

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
1002	WTJP-TV	2,037,103	2,002,301	13,211
4593	WTJR	316,974	316,852	2,091
70287	WTJX-TV	112,125	104,561	690
47401	WTKR	2,242,929	2,242,846	14,798
82735	WTLF	883,350	883,326	5,828
23486	WTLH	1,082,589	1,082,542	7,143
67781	WTLJ	1,738,667	1,736,853	11,460
65046	WTLV	2,041,165	2,022,822	13,347
74098	WTMJ-TV	3,139,304	3,123,411	20,608
74109	WTNH	7,999,974	7,453,267	49,177
19200	WTNZ	1,790,817	1,598,570	10,547
590	WTOC-TV	1,061,993	1,061,993	7,007
74112	WTOG	6,239,245	6,236,871	41,151
4686	WTOK-TV	391,847	386,112	2,548
13992	WTOL	4,534,147	4,527,590	29,873
21254	WTOM-TV	120,159	116,524	769
74122	WTOV-TV	3,866,114	3,605,421	23,789
82574	WTPC-TV	2,138,494	2,132,635	14,071
86496	WTPX-TV	258,246	258,154	1,703
6869	WTRF-TV	2,938,363	2,562,114	16,905
67798	WTSF	879,853	811,994	5,358
11290	WTSP	6,538,906	6,515,239	42,988
4108	WTTA	6,656,303	6,639,930	43,810
74137	WTTE	2,926,672	2,885,004	19,035
22207	WTTG	8,945,253	8,890,093	58,657
56526	WTTK	3,074,975	3,055,143	20,158
74138	WTTQ	1,966,252	1,931,949	12,747
56523	WTTV	2,752,635	2,749,080	18,138
10802	WTTW	9,929,487	9,929,071	65,512
74148	WTVA	807,017	794,561	5,243
22590	WTV	1,658,814	1,434,931	9,468
8617	WTV	4,201,042	4,188,018	27,633
55305	WTV	5,368,807	5,365,301	35,400
36504	WTV	2,816,921	2,798,755	18,466
74150	WTV	4,440,934	4,429,742	29,227
74151	WTV	1,375,016	1,313,054	8,664
10645	WTV	3,286,073	3,261,428	21,519
63154	WTV	6,009,434	6,009,434	39,650
52280	WTV	7,403,075	7,395,979	48,799
595	WTV	1,577,223	1,471,502	9,709
72945	WTV	1,413,778	1,400,377	9,240
28311	WTV	660,258	660,214	4,356
51597	WTVQ-DT	1,060,102	1,054,409	6,957
57832	WTVR-TV	1,998,729	1,990,377	13,133
16817	WTVS	5,607,125	5,606,929	36,995
68569	WTVT	6,511,462	6,491,829	42,833
3661	WTVW	839,062	833,035	5,496
35575	WTVX	3,558,645	3,556,727	23,467
4152	WTVY	1,032,612	1,029,898	6,795
40759	WTVZ-TV	2,246,928	2,246,845	14,825
66908	WTVZ-TV	1,078,213	1,078,166	7,114
20426	WTVZ	716,304	710,680	4,689
81692	WTVZ	1,529,924	1,528,555	10,085
51568	WTVZ-TV	11,330,716	11,023,958	72,736
41065	WTVZ-TV	1,071,056	1,070,908	7,066
8532	WUAB	3,819,462	3,739,439	24,673
12855	WUCF-TV	4,516,827	4,516,827	29,802
36395	WUCW	4,213,867	4,205,494	27,748
69440	WUFT	1,524,792	1,524,792	10,061
413	WUHF	1,161,377	1,157,795	7,639
8156	WUJA	2,449,731	2,192,227	14,464
69080	WUNC-TV	4,701,102	4,682,210	30,893
69292	WUND-TV	1,526,704	1,526,704	10,073
69114	WUNE-TV	3,449,284	2,886,515	19,045
69300	WUNF-TV	2,825,704	2,517,064	16,608
69124	WUNG-TV	4,065,099	4,049,218	26,717
60551	WUNI	7,755,236	7,627,170	50,324
69332	WUNJ-TV	1,224,449	1,224,449	8,079
69149	WUNK-TV	2,105,575	2,099,533	13,853

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
69360	WUNL-TV	3,243,843	3,015,382	19,895
69444	WUNM-TV	1,370,547	1,370,547	9,043
69397	WUNP-TV	1,488,708	1,474,989	9,732
69416	WUNU	1,212,006	1,210,875	7,989
83822	WUNW	2,012,283	1,476,883	9,744
6900	WUPA	6,845,271	6,764,030	44,629
13938	WUPL	1,833,116	1,833,116	12,095
10897	WUPV	2,142,407	2,122,016	14,001
19190	WUPW	2,136,541	2,135,020	14,087
23128	WUPX-TV	1,182,585	1,166,267	7,695
65593	WUSA	9,654,785	9,309,845	61,426
4301	WUSI-TV	320,658	320,658	2,116
60552	WUTB	9,293,641	9,148,848	60,364
30577	WUTF-TV	8,479,857	8,266,141	54,540
57837	WUTR	511,394	470,311	3,103
415	WUTV	1,611,128	1,579,265	10,420
16517	WUVC-DT	4,224,285	4,208,453	27,767
48813	WUVG-DT	6,908,879	6,834,542	45,094
3072	WUVN	1,236,426	1,156,397	7,630
60560	WUVP-DT	10,944,731	10,756,717	70,973
9971	WUXP-TV	2,749,827	2,737,094	18,059
417	WVAH-TV	1,295,710	1,222,075	8,063
23947	WVAN-TV	1,118,534	1,117,845	7,376
65387	WVBT	1,964,109	1,964,109	12,959
72342	WVCY-TV	3,149,773	3,140,719	20,722
60559	WVEA-TV	5,324,315	5,322,343	35,117
74167	WVEC	2,189,627	2,184,435	14,413
5802	WVEN-TV	4,749,513	4,749,513	31,337
61573	WVEO ⁵	962,531	803,553	2,946
69946	WVER	903,858	770,412	5,083
10976	WVFX	688,514	596,278	3,934
47929	WVIA-TV	3,472,501	2,879,994	19,002
3667	WVII-TV	368,499	348,813	2,301
70309	WVIR-TV	2,140,100	2,107,081	13,903
74170	WVIT	5,920,252	5,425,459	35,797
18753	WVIZ	3,694,957	3,687,740	24,332
70021	WVLA-TV	1,969,063	1,969,000	12,991
81750	WVLR	1,483,484	1,376,091	9,079
35908	WVLT-TV	1,983,974	1,714,780	11,314
74169	WVNS-TV	889,675	560,472	3,698
11259	WVNY	755,448	673,828	4,446
29000	WVOZ-TV ⁹	981,832	762,182	2,946
71657	WVPB-TV	939,383	910,465	6,007
60111	WVPT	995,523	887,449	5,855
70491	WVPX-TV	4,131,639	4,098,980	27,045
66378	WVPY	995,523	887,449	5,855
67190	WVSN	2,593,148	2,271,512	14,987
69940	WVTB	468,294	246,240	1,625
74173	WVTM-TV	2,101,947	2,026,895	13,373
74174	WVTV	3,130,664	3,122,630	20,603
77496	WVUA	2,305,621	2,250,337	14,848
4149	WVUE-DT	1,759,779	1,759,779	11,611
4329	WVUT	267,636	267,555	1,765
74176	WVVA	997,556	690,651	4,557
3113	WVXF	70,673	66,853	441
12033	WWAY	1,328,366	1,328,366	8,765
30833	WWBT	2,109,206	2,074,930	13,690
20295	WWCP-TV	2,798,717	2,540,105	16,760
24812	WWCW	1,390,908	1,210,482	7,987
23671	WWDP	6,230,964	5,959,061	39,318
21158	WWHO	2,994,400	2,952,760	19,482
14682	WWJE-DT	7,755,236	7,627,170	50,324
65919	WWJS	3,798,882	3,731,768	24,622
72123	WWJ-TV	5,653,566	5,653,219	37,300
166512	WWJX	524,625	524,579	3,461
6868	WWLP	3,866,407	3,097,621	20,438
74192	WWL-TV	1,908,335	1,908,335	12,591
3133	WWMB	1,596,320	1,591,501	10,501
74195	WWMT	2,667,986	2,657,016	17,531

TABLE 8—FULL-SERVICE TELEVISION STATIONS—FY 2024 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area	Terrain limited	Terrain limited
		Population	Population	Fee amount
68851	WWNY-TV	368,613	341,101	2,251
74197	WWOR-TV	21,146,732	20,904,564	137,928
65943	WWPB	3,531,585	3,086,500	20,365
23264	WWPX-TV	2,612,045	2,544,163	16,786
68547	WWRS-TV	2,376,549	2,354,442	15,535
61251	WWSB	3,830,838	3,830,838	25,276
23142	WWSI	11,821,594	11,646,436	76,843
16747	WWTI	195,127	188,538	1,244
998	WWTO-TV	6,837,732	6,837,732	45,115
26994	WWTV	1,047,227	1,032,448	6,812
84214	WWTW	1,529,924	1,528,555	10,085
26993	WWUP-TV	114,688	108,690	717
23338	WXBW	4,219,869	3,695,568	24,383
61504	WXCW	2,000,927	2,000,927	13,202
61084	WXEL-TV	5,976,331	5,976,331	39,432
60539	WXFT-DT	10,333,090	10,326,952	68,137
23929	WXGA-TV	618,176	616,843	4,070
51163	WXIA-TV	7,067,151	6,920,534	45,662
53921	WXII-TV	3,895,811	3,546,156	23,398
146	WXIN	3,066,589	3,043,020	20,078
39738	WXIX-TV	3,033,449	3,023,049	19,946
414	WXLV-TV	4,920,177	4,882,710	32,216
68433	WXMI	2,110,083	2,109,607	13,919
64549	WXOW	433,343	422,605	2,788
6601	WXPX-TV	5,414,068	5,411,832	35,707
74215	WXTV-DT	21,842,105	21,428,169	141,383
12472	WXTX	745,811	742,438	4,899
11970	WXXA-TV	1,691,753	1,553,272	10,248
57274	WXXI-TV	1,192,140	1,176,310	7,761
53517	WXXV-TV	1,235,520	1,233,511	8,139
10267	WXYZ-TV	5,716,967	5,716,632	37,718
77515	WYCI	32,321	21,447	142
70149	WYCW	3,717,232	3,549,667	23,421
62219	WYDC	542,984	435,924	2,876
18783	WYDN	2,760,323	2,697,351	17,797
35582	WYDO	1,340,990	1,340,990	8,848
25090	WYES-TV	2,002,806	2,002,459	13,212
53905	WYFF	2,836,376	2,609,544	17,218
49803	WYIN	7,062,511	7,062,511	46,598
24915	WYMT-TV	1,144,051	819,069	5,404
17010	WYOU	2,912,468	2,246,394	14,822
77789	WYOW	94,927	94,486	623
13933	WYPX-TV	1,547,670	1,434,147	9,463
4693	WYTV	4,870,043	4,522,748	29,841
5875	WYZZ-TV	1,008,995	1,002,743	6,616
15507	WZBJ	1,603,364	1,421,509	9,379
28119	WZDX	1,714,034	1,633,019	10,775
70493	WZME	21,320,488	20,875,035	137,733
81448	WZMQ	73,784	73,510	485
71871	WZPX-TV	2,165,413	2,165,333	14,287
136750	WZRB	1,007,172	1,006,731	6,642
418	WZTV	2,743,270	2,733,978	18,039
83270	WZVI	64,187	63,279	418
19183	WZVN-TV	2,331,155	2,331,155	15,381
49713	WZZM	1,678,220	1,652,095	10,901

¹ Call signs WIPM and WIPR are stations in Puerto Rico that are linked together with a total fee of \$20,455.² Call signs WNJX and WAPA are stations in Puerto Rico that are linked together with a total fee of \$20,455.³ Call signs WKAQ and WORA are stations in Puerto Rico that are linked together with a total fee of \$20,455.⁴ Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of \$20,455.⁵ Call signs WVEO and WTCV are stations in Puerto Rico that are linked together with a total fee of \$20,455.⁶ Call signs WJPX and WJWN are stations in Puerto Rico that are linked together with a total fee of \$20,455.⁷ Call signs WAPA and WTIN are stations in Puerto Rico that are linked together with a total fee of \$20,455.⁸ Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of \$20,455.⁹ Call signs WVOZ and WTCV are stations in Puerto Rico that are linked together with a total fee of \$20,455.¹⁰ Call signs WJPX and WKPV are stations in Puerto Rico that are linked together with a total fee of \$20,455.¹¹ Call signs WMTJ and WQTO are stations in Puerto Rico that are linked together with a total fee of \$20,455.¹² Call signs WIRS and WJPX are stations in Puerto Rico that are linked together with a total fee of \$20,455.¹³ Call signs WRFB and WORA are stations in Puerto Rico that are linked together with a total fee of \$20,455.

TABLE 9—FY 2023 SCHEDULE OF FEES—FY 2023 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80, and 90) (Includes Non-Geographic telephone numbers)	.16.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24, and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	700.
Local Multipoint Distribution Service (per call sign) (47 CFR part 101)	700.
AM Radio Construction Permits	620.
FM Radio Construction Permits	1,085.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	\$.007799.
	See Appendix G of FY 2023 Report and Order for fee amounts due, also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees .
Digital TV Construction Permits	5,100.
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	260.
CARS (47 CFR part 78)	1,720.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.23.
Interstate Telecommunication Service Providers (per revenue dollar)	.00540.
Toll Free (per toll free subscriber) (47 CFR 52.101(f))	.13.
Earth Stations (47 CFR part 25)	575.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	117,580.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	347,755.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	130,405.
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	\$26.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2023 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤10,000	\$595	\$430	\$370	\$410	\$650	\$745
10,001–25,000	990	715	620	680	1,085	1,240
25,001–75,000	1,485	1,075	930	1,020	1,630	1,860
75,001–150,000	2,230	1,610	1,395	1,530	2,440	2,790
150,001–500,000	3,345	2,415	2,095	2,300	3,665	4,190
500,001–1,200,000	5,010	3,620	3,135	3,440	5,490	6,275
1,200,001–3,000,000	7,525	5,435	4,710	5,170	8,245	9,425
3,000,001–6,000,000	11,275	8,145	7,060	7,745	12,360	14,125
>6,000,000	16,920	12,220	10,595	11,620	18,545	21,190

FY 2023 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2022)	Fee ratio (units)	FY 2023 regulatory fees
Less than 50 Gbps	.0625	\$7,680
50 Gbps or greater, but less than 250 Gbps	.125	15,355
250 Gbps or greater, but less than 1,500 Gbps	.25	30,705
1,500 Gbps or greater, but less than 3,500 Gbps	.5	61,410
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	122,815
6,500 Gbps or greater	2.0	245,630

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FY 2024 NPRM* released in June 2024. The Federal Communications Commission (Commission or FCC) sought written public comment on the proposals in the *FY 2024 NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

In the *Report and Order*, the Commission adopts a regulatory fee schedule to meet its objective of fully complying with its congressionally mandated requirement of collecting regulatory fees for fiscal year (FY) 2024. For FY 2024, the Commission is required to collect \$390,192,000 in regulatory fees, an amount equal to the Commission's annual salaries and expenses appropriation, pursuant to section 9 of the Communications Act of 1934, as amended (Communications Act or Act), and the Commission's FY 2024 Further Consolidation Appropriations Act. The Commission's methodology for assessing regulatory fees must "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities." The total amount the Commission must collect in an offsetting collection generally changes each fiscal year, and payors' regulatory fees will also typically change each fiscal year as a mathematical consequence of the changes in the total amount to be collected, the number of full-time equivalents (FTEs), and projected unit estimates for each regulatory fee category.

In 2023, the Commission eliminated the International Bureau, established a new Space Bureau and a new Office of International Affairs, and reallocated the authorities and functions of the International Bureau to the Space Bureau and the Office of International Affairs. In light of these actions, for FY 2024, the Commission reviewed the FY 2023 reallocations to determine if any changes are warranted, and proposed to slightly revise the FY 2023 reallocations to the core bureaus, including the new Space Bureau and the new Office of International Affairs.

In the *FY 2024 NPRM*, the Commission also sought comment on several additional regulatory fee issues, including: (i) the calculation of television broadcaster regulatory fees; (ii) how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iii) the end of temporary relief measures we implemented in response to the COVID-19 pandemic; (iv) our proposal to discontinue the Commission's presumption that broadcast stations that are dark or were recently dark or bankrupt are experiencing financial hardship sufficient to justify waiver of their regulatory fees; and (v) ways in which the Commission might assist regulatory fee payors in meeting their annual regulatory fee obligations. For FY 2024, the Commission adopts, with modification, the regulatory fee schedule set forth in tables 3 and 4 of this document.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA. However, one commenter, Iridium, contends that adopting the 60/40 allocation split between Geostationary Orbit (GSO) and Non-Geostationary Orbit (NGSO) for FY 2024 would impose a burden on smaller NGSO systems. The Commission does not agree that it would be appropriate to delay this allocation, in that it more accurately represents the FY 2024 FTE burden in the Space Bureau than the prior 80/20 allocation.

Response to Comments by Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as

having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022

U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

Wired Telecommunications Carriers.

The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.

Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired

telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Local Exchange Carriers (LECs).

Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for

2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Incumbent Local Exchange Carriers (Incumbent LECs).

Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

Competitive Local Exchange Carriers (CLECs).

Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal

Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

Prepaid Calling Card Providers.

Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees.

Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services. Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Local Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Toll Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell

telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless

internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

Television Broadcasting. This industry is comprised of "establishments primarily engaged in broadcasting images together with sound." These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$47 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than \$25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

As of June 30, 2024, there were 1,384 licensed commercial television stations. Of this total, 1,307 stations (or 94.4%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 3, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2024, there were 382 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,821 LPTV stations and 3,100 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of

these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

Radio Stations. This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public." Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than \$25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

The Commission estimates that as of June 30, 2024, there were 4,413 licensed commercial AM radio stations and 6,620 licensed commercial FM radio stations, for a combined total of 11,033 commercial radio stations. Of this total, 11,032 stations (or 99.99%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on July 3, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of June 30, 2024, there were 4,356 licensed noncommercial (NCE) FM radio stations, 1,965 low power FM (LPFM) stations, and 8,906 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate

revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note

however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (co-owned by AT&T) and DISH Network (owned by EchoStar Corp.), which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

Satellite Telecommunications. This industry comprises firms "primarily engaged in providing telecommunications services to other

establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$44 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g. dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

RespOrgs. Responsible Organizations, or RespOrgs (also referred to as Toll-Free Number (TFN) providers), are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber. Based on information on

the website of SOMOS, the entity that maintains a registry of Toll-Free Number providers (SMS/800 TFN Registry) for the more than 42 million Toll-Free numbers in North America, and the TSS Registry, a centralized registry for the use of Toll-Free Numbers in text messaging and multimedia services, there were approximately 446 registered RespOrgs/Toll-Free Number providers in July 2021. RespOrgs are often wireline carriers, however they can include non-carrier entities. Accordingly, the description below for RespOrgs include both Carrier RespOrgs and Non-Carrier RespOrgs.

Carrier RespOrgs. Neither the Commission nor the SBA have developed a small business size standard for Carrier RespOrgs. *Wired Telecommunications Carriers*, and *Wireless Telecommunications Carriers (except Satellite)* are the closest industries with a SBA small business size applicable to Carrier RespOrgs.

Wired Telecommunications Carriers are establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

Wireless Telecommunications Carriers (except Satellite) engage in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA small business size

standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Based on this data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

Non-Carrier RespOrgs. Neither the Commission, nor the SBA have developed a small business size standard Non-Carrier RespOrgs. *Other Services Related to Advertising and Other Management Consulting Services* are the closest industries with a SBA small business size applicable to Non-Carrier RespOrgs.

The *Other Services Related to Advertising* industry contains establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services). The SBA small business size standard for this industry classifies a business as small that has annual receipts of \$16.5 million or less. U.S. Census Bureau data for 2017 show that 5,650 firms operated in this industry for the entire year. Of that number, 3,693 firms operated with revenue of less than \$10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

The *Other Management Consulting Services* industry contains establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has annual receipts of \$16.5 million or less. U.S. Census Bureau data for 2017 show that 4,696 firms operated in this industry for the entire year. Of that number, 3,700 firms had revenue of less than \$10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The *Report and Order* does not adopt any changes to the Commission's current information collection, reporting, recordkeeping, or other compliance requirements for collecting regulatory fees from small entities. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory assessment for small entities is the amount assessed for their regulatory fee category and should not require small entities to hire professionals in order to comply, as they are accustomed to paying the annual fees and most should be familiar with both the Commission's current collection process as well as the process put in place prior to the COVID-19 pandemic.

However, the *Report and Order* does adopt changes to the current fee waiver process, which may impact small entities, by returning to normal, pre-COVID-19 pandemic operations and discontinuing temporary waiver relief from regulatory fees available in the *FY 2023 Report and Order* that was not codified at that time. The Commission now will require small and other entities seeking relief through a waiver, reduction, and/or deferral of fees to submit all financial documents necessary to support their hardship request at the time of filing the request. In addition, the Commission is restoring the red light rule so that entities, including small entities, must not be in red light status at the time of filing a request for waiver, reduction, deferral, or installment payments. Small entities may be able to take advantage of the streamlined waiver processes, including permitting parties to submit a single waiver request for various forms of relief electronically, instead of separate filings and for FY 2024 regulatory fees, a low interest rate and no down payment requirement for installment payment of regulatory fees.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to provide "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect

the impact on small entities was rejected."

In response to the *FY 2024 NPRM*, the Commission received comments proposing alternatives to various elements of the methodology for assessing regulatory fees and the FY 2024 regulatory fee schedule, as well as other issues related to the collection of regulatory fees. After considering those alternatives, as well as those discussed amongst Commission staff, the rules adopted in the *Report and Order* reflect the Commission's efforts to minimize significant economic impact on small entities when practicable. Below is a discussion of some of the steps the Commission has taken in the *Report and Order* and alternative proposals it considered in reaching its conclusions.

Assessment of Regulatory Fees. For FY 2024, we employ the same methodology as the Commission did in FY 2023. However, we conclude that changes within the Commission's organizational structure and in additional staff resources merits a review of the FY 2023 reallocations of the FTEs located in the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that were previously considered to be indirect FTEs and were allocated as direct FTEs to a core bureau. Specifically, effective on April 10, 2023, the International Bureau was eliminated by establishing a new Space Bureau and a new Office of International Affairs. We also analyzed the FTEs previously reallocated as direct to a core bureau in FY 2023 for regulatory fee purposes to determine whether there have been any shifts in work assignments such that the number of allocations to a core bureau for regulatory fee purposes should be adjusted. Also, in instances where an FTE was previously allocated to the International Bureau as direct for regulatory fee purposes, we analyzed the specific work done by the FTE to determine whether such FTE should be allocated to the new Office of International Affairs or the new Space Bureau. Based on the results of our evaluation, we conclude that certain indirect FTEs could be reassigned as direct FTEs and incorporate these into the count of FTEs of the relevant core bureau for purposes of calculating regulatory fees for FY 2024, which could reduce regulatory fee obligations for some small and other regulatory payees.

Additionally, on March 13, 2024, the Commission released the *Space and Earth Station Regulatory Fees NPRM* seeking comment on proposed changes to the regulatory fee methodology used

for assessing space and earth station regulatory fees for FY 2024. We proposed regulatory fee rates based on the proposals set forth in the *Space and Earth Station Regulatory Fees NPRM*, and therefore, did not need to seek comment again on the *FY 2024 NPRM*.

Broadcast Regulatory Fees. In the *Report and Order*, we continue to assess fees for full-power broadcast television stations based on the population covered by a full-service broadcast television station's contour, which may reduce the economic impact of the regulatory fees for some small licensees. While the population-based methodology increases fees for some licensees and reduces fees for others, we believe the population-based metric better conforms with the service of broadcasting television to the American people.

In addition, entities experiencing financial hardship, including small businesses, will continue to have access to fee relief, such as waiver, reduction, deferral and/or installment payment of their regulatory fees and may be exempt from paying a regulatory fee if the assessed fee is below the de minimis threshold that the Commission has established.

Relief Measures. During the COVID-19 pandemic and through FY 2023, the Commission provided certain temporary relief to regulatory fee payors experiencing financial hardship caused or exacerbated by the COVID-19 pandemic through a combination of partial rule waivers and direction to the Office of the Managing Director in exercising its delegated authority. In the *Report and Order*, the Commission eliminates some temporary measures for FY 2024 because the circumstances for which the measures were temporarily implemented have changed, *i.e.*, the National Emergency COVID-19 pandemic has ended and the national economy is rebounding.

The Commission restores operation of the "red light" rule and therefore will not act on and will dismiss any requests for waiver, reduction, deferral, or for installment payments if the payor is in red light status when the request is filed. Further, the Commission, under § 1.1166 of the rules, now requires parties to submit, at the time of filing, their financial information to support any request for waiver, reduction, deferral or installment payments. Finally, in recognition of the possible hardship to certain Space Bureau fee payors caused by a significant increase in their FY 2024 regulatory fees, the Commission will, for all regulatory fee payors' installment payment plans, fix interest rates on all installment

payments for payment of FY 2024 regulatory fee debt at the lowest rate permitted by statute; will not require parties to submit the customary down payment for installment payment plans.

Non-Operating Broadcast Stations. In the *Report and Order*, we end the policy of presuming that dark or silent stations have experienced financial hardship and therefore merit granting a request for waiver of regulatory fees on the basis of financial hardship, without requiring submission of evidence of actual financial hardship. This policy was first mentioned by the Commission in 1995, and then applied by the Commission's Office of the Managing Director in 1996. The Commission, however, has never codified this policy and it is rarely used. The policy, moreover, appears to assume that the only rationale for a dark or silent station is financial duress. There is no such limitation, however, contained in § 73.1740(a)(4) of the Commission's rules. Licensees might go dark for different reasons depending on each station's particular circumstances. Thus, drawing on the Commission's experience since establishment of the policy in 1995, the assumption that requiring financial information in a request for waiver of regulatory fees is unnecessary by the operators of a dark or silent station appears to be no longer accurate in 2024. In the *Report and Order*, we therefore end the assumption that stations are dark or were recently dark or bankrupt are experiencing financial distress when they file a

request for waiver of regulatory fees. Instead, we require that these licensees submit supporting financial documentation with their fee requests to prove financial hardship sufficient to justify a fee waiver, just as all other regulatory fee payors are required to do under § 1.1166 of our rules. In order to give regulatory fee payors, many of which are small entities, more time to make any necessary changes to comply with this change in policy, we will make this change effective for fiscal year 2025.

Report to Congress

The Commission will send a copy of the *Report and Order*, including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to 47 U.S.C. 4(i), 4(j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), the *Report and Order is hereby adopted*.

It is further ordered that the FY 2024 section 9 regulatory fees assessment requirements *are adopted* as specified herein.

It is further ordered that the Commission's Office of the Secretary *shall send* a copy of the *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communications, Reporting and recordkeeping requirements, Telecommunications, Telephone, Television.

Federal Communications Commission.

Katura Jackson,
Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

- 2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees for wireless radio services.

TABLE 1 TO § 1.1152

Exclusive use services (per license)	Fee amount
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):	
(a) New, Renew/Mod (FCC 601 & 159)	\$25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
220 MHz Nationwide:	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
2. Microwave (47 CFR part 101) (Private):	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
3. Shared Use Services—	
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):	
(a) New, Renew/Mod (FCC 601 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(c) Renewal Only (FCC 601 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00
Rural Radio (47 CFR part 22):	
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(b) Renewal, Minor Renew/Mod (Electronic Filing)	10.00
4. Marine Coast:	
(a) New Renewal/Mod (FCC 601 & 159)	40.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	40.00

TABLE 1 TO § 1.1152—Continued

Exclusive use services (per license)	Fee amount
(c) Renewal Only (FCC 601 & 159)	40.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00
5. Aviation Ground:	
(a) New, Renewal/Mod (FCC 601 & 159)	20.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	20.00
(c) Renewal Only (FCC 601 & 159)	20.00
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	20.00
6. Marine Ship:	
(a) New, Renewal/Mod (FCC 605 & 159)	15.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	15.00
(c) Renewal Only (FCC 605 & 159)	15.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	15.00
7. Aviation Aircraft:	
(a) New, Renew/Mod (FCC 605 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00
(c) Renewal Only (FCC 605 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00
8. CMRS Cellular/Mobile Services (per unit) (FCC 159)	¹ .16
9. CMRS Messaging Services (per unit) (FCC 159)	² .08
10. Broadband Radio Service (formerly MMDS and MDS)	725
11. Local Multipoint Distribution Service	725

¹ These are standard fees that are to be paid in accordance with § 1.1157(b).

² These are standard fees that are to be paid in accordance with § 1.1157(b).

■ 3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

TABLE 1 TO § 1.1153

	Fee amount
Radio [AM and FM] (47 CFR Part 73)	
1. AM Class A:	
≤10,000 population	\$560
10,001–25,000 population	935
25,001–75,000 population	1,405
75,001–150,000 population	2,105
150,001–500,000 population	3,160
500,001–1,200,000 population	4,730
1,200,001–3,000,000 population	7,105
3,000,001–6,000,000 population	10,650
>6,000,000 population	15,980
2. AM Class B:	
≤10,000 population	405
10,001–25,000 population	675
25,001–75,000 population	1,015
75,001–150,000 population	1,520
150,001–500,000 population	2,280
500,001–1,200,000 population	3,415
1,200,001–3,000,000 population	5,130
3,000,001–6,000,000 population	7,690
>6,000,000 population	11,535
3. AM Class C:	
≤10,000 population	350
10,001–25,000 population	585
25,001–75,000 population	880
75,001–150,000 population	1,315
150,001–500,000 population	1,975
500,001–1,200,000 population	2,960
1,200,001–3,000,000 population	4,445
3,000,001–6,000,000 population	6,665
>6,000,000 population	10,000
4. AM Class D:	
≤10,000 population	385
10,001–25,000 population	645
25,001–75,000 population	970

TABLE 1 TO § 1.1153—Continued

	Fee amount
75,001–150,000 population	1,450
150,001–500,000 population	2,180
500,001–1,200,000 population	3,265
1,200,001–3,000,000 population	4,900
3,000,001–6,000,000 population	7,345
>6,000,000 population	11,025
5. AM Construction Permit	585
6. FM Classes A, B1 and C3:	
≤10,000 population	615
10,001–25,000 population	1,025
25,001–75,000 population	1,540
75,001–150,000 population	2,305
150,001–500,000 population	3,465
500,001–1,200,000 population	5,185
1,200,001–3,000,000 population	7,790
3,000,001–6,000,000 population	11,675
>6,000,000 population	17,515
7. FM Classes B, C, C0, C1 and C2:	
≤10,000 population	700
10,001–25,000 population	1,170
25,001–75,000 population	1,755
75,001–150,000 population	2,635
150,001–500,000 population	3,955
500,001–1,200,000 population	5,920
1,200,001–3,000,000 population	8,890
3,000,001–6,000,000 population	13,325
>6,000,000 population	19,995
8. FM Construction Permits	1,025
TV (47 CFR part 73)	
9. Digital TV (UHF and VHF Commercial Stations):	
1. Digital TV Construction Permits	5,200
2. Television Fee Factor	.006598 per pop.
10. Low Power TV, Class A TV, FM Translator, & TV/FM Booster (47 CFR part 74)	245

■ 4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges for common carrier services.

TABLE 1 TO § 1.1154

Radio facilities	Fee amount
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	\$25.00.
Carriers:	
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A)	.00542.
2. Toll Free Number Fee	.12 per Toll Free Number.

■ 5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees for cable television services.

TABLE 1 TO § 1.1155

	Fee amount
1. Cable Television Relay Service	\$1,825
2. Cable TV System, Including IPTV (per subscriber), and DBS (per subscriber)	1.27

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees for international services.

(a) *Geostationary orbit (GSO) and non-geostationary orbit (NGSO) space*

stations. The following schedule applies for the listed services:

TABLE 1 TO PARAGRAPH (a)

Fee category	Fee amount
Space Stations (Geostationary Orbit)	\$144,155
Space Stations (Non-Geostationary Orbit)—Other	964,200
Space Stations (Non-Geostationary Orbit)—Less Complex	441,925
2,Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	2,610

(b) *International terrestrial and satellite Bearer Circuits.* (1) Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which

includes active circuits to themselves or to their affiliates. In addition, non-common carrier terrestrial and satellite operators must pay a fee for each active circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. “Active circuits” for

purposes of this paragraph (b) include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active Gbps circuit will be determined for each fiscal year.

TABLE 2 TO PARAGRAPH (b)(2)

International terrestrial and satellite (capacity as of December 31, 2023)	Fee amount
Terrestrial Common Carrier and Non-Common Carrier	\$17 per Gbps circuit.
Satellite Common Carrier and Non-Common Carrier	

(c) *Submarine cable.* Regulatory fees for submarine cable systems will be paid annually, per cable landing license,

for all submarine cable systems operating based on their lit capacity as of December 31 of the prior year. The

fee amount will be determined by the Commission for each fiscal year.

TABLE 3 TO PARAGRAPH (c)—FY 2024 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (lit capacity as of December 31, 2023)	Fee ratio (units)	FY 2024 regulatory fees
Less than 50 Gbps	.0625	\$5,570
50 Gbps or greater, but less than 250 Gbps	.125	11,140
250 Gbps or greater, but less than 1,500 Gbps	.25	22,275
1,500 Gbps or greater, but less than 3,500 Gbps	.5	44,550
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	89,095
6,500 Gbps or greater	2.0	178,190



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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; NYSE Chicago, 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. 34–101089; File No. SR–NYSECHX–2024–28]

Self-Regulatory Organizations; NYSE Chicago, 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 18, 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 September 6, 2024, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (“Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s Fee Schedule titled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing

Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the

requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See NYSE Chicago Rule 6.6810(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 NYSE Chicago Rule 6.6810.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the

Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT) ²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ See Securities Exchange Act Rel. No. 99366 (Jan. 17, 2024), 89 FR 10315 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc. To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to,

pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, 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,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period),

the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- 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;

³⁴ See Appendix C–108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services

on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁵⁰ 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”),⁵¹ which covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which

covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
<i>Technology Costs:</i>	
Cloud Hosting Services .....	.....
Operating Fees .....	.....
CAIS Operating Fees .....	.....
Change Request Fees .....	.....

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT

Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's Fee Schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its Fee Schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section 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) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that "[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b)."

(B) Manner of Payment

Paragraph (b)(1) to the "Consolidated Audit Trail Funding Fees" section of its Fee Schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that "[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange's Fee Schedule. Specifically, paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share

volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that "[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹² The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁴ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b)

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that "[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees." CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁵ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive

Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an

order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBsS paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze

the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations

(Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

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 Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory

Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which

is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain

instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large

Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹¹² *Id.* at 23079.

¹¹³ *Id.*

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain *[sic]* two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether

trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the

extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the "2020 Verbal Quotes Order").¹²⁸ The Commission has stated that, "to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied."¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any

applicable Financial Accountability Milestones."¹³¹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date

of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the "2020 Verbal Quotes Exemption").

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738–39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan

Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the

DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional

evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services

were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to

¹⁵⁵ *Id.*

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include

services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute

services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

• *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework

that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the

Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa

Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.
- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example,

DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the

Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the

Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives

were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described

above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself

from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/

acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms’ ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a “reconciliation” and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm’s internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm’s internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT with CAT Invoices to Firms’ Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm’s internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters’ ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices (“Additional Trade Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related

Continued

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant

complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT

LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to

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).

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT

Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section

6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ See Securities Exchange Act Rel. No. 99366 (Jan. 17, 2024), 89 FR 10315 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Amend the Fee Schedule of NYSE Chicago, Inc. To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

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 CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent

with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for

Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of

non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars)

and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D-4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized

an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of

Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the

balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public

relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery

period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain

responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the Fee Schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the

Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSECHX-2024-28 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSECHX-2024-28. 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-NYSECHX-2024-28 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

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²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676-86.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).



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Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; NYSE American 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. 34–101086; File No. SR–NYSEAMER–2024–56]

Self-Regulatory Organizations; NYSE American 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 18, 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 September 9, 2024 NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE American Equities Price List (“Equities Price List”) and the NYSE American Options Fee Schedule (“Options Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Equities Price List and the Options Fee Schedule titled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT

Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the

requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBS or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See NYSE American Rule 6810(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 NYSE American Rule 6810.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an

exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/ 13.n.8 ...	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT)²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ See Securities Exchange Act Rel. No. 99381 (Jan. 17, 2024), 89 FR 10620 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and 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.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT Costs 1 for Pre-FAM Period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT Costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, 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,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period),

the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- 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;

³⁴ See Appendix C–108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services

on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
<i>Technology Costs</i>	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁵⁰ 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”),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which

covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs: **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21/to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;

- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;

- Assisted with the Plan Processor transition;

- Provided assistance regarding communications with the industry regarding the CAT;

- Provided advice regarding Customer Account Information and PII;

- Provided support for litigation related to SEC exemptive orders; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;

- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would state that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in

calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Equities Price List and the Options Fee Schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBSs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) under the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

invoice for Historical CAT Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.⁸⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) under the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule.

Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would set 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 the Equities Price List and the Options Fee Schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that "[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange's Equities Price List and the Options Fee Schedule. Specifically, paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide

CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both

view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that "[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees." CAT Funding Model Approval Order at 62667.

the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that "[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹² The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

achieved”⁹⁴ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁵ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions

phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

⁹⁴ Section 11.6 of the CAT NMS Plan.

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the

exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on

December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described

above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section

6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as

discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the

responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;

- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in

¹¹³ *Id.*

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹² *Id.* at 23079.

the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry

Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without

an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission's May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the "2023 Verbal Quotes Exemption") affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the "2020 Verbal Quotes Order").¹²⁸ The Commission has stated that, "to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied."¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order

granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³¹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting

differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the "2020 Verbal Quotes Exemption").

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary,

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would

Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738-39.

address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the “Selection Plan”).¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that “it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.”¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was

deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (*e.g.*, lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time

period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff,

the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges,

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

¹⁵⁴ *Id.* at 11857.

¹⁵⁵ *Id.*

FINRA and other third parties, such as Deloitte;

- Provided tax advice with regard to CAT's status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is

reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive

relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make

use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and

"batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Theysys, it utilized certain aspects of the technical specifications created by Theysys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan

Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identity management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related To Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and

scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which

Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and

scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for

Large Industry Members went live on April 26, 2021.

- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
 - The full, final CAIS Technical Specifications were published on January 29, 2021.
 - Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶
- As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS

Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings

against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . consulting . . ." costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . consulting"¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades*: Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records*: Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification*: Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC

provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members’ ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters’ Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms’ ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters’ ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide

technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT’s perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms’ ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for

many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters’ ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may “over-collect” Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

¹⁹⁹ “FINRA charges a Regulatory Transaction Fee (“RTF”) to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years.” Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in

November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This

filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act,

for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ See Securities Exchange Act Rel. No. 99381 (Jan. 17, 2024), 89 FR 10620 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule To Establish Fees

and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the

transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of

²¹³ CAT NMS Plan Approval Order at 84697.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records

per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and

the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, *e.g.*, CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The

hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and

guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1— that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable.

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph

(a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Price List and the Options Fee Schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed

allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and 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

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the Fee Schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to

introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-56 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.

²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676-86.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

All submissions should refer to file number SR–NYSEAMER–2024–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEAMER–2024–56 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,
Assistant Secretary.

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²⁷³ 17 CFR 200.30–3(a)(12).



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Part V

Securities and Exchange Commission

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101087; File No. SR–NYSE–2024–53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 18, 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 September 6, 2024, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Price List (“Price List”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s Price List titled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or

CAT Executing Brokers for the Seller (“CEBS”) in October 2024. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the

requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See NYSE Rule 6810(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 NYSE Rule 6810.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an

exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	Member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided	C

OPTION TRADE (OT)²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order	R

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ See Securities Exchange Act Rel. No. 99380 (Jan. 17, 2024), 89 FR 11078 (Feb. 13, 2024) (Notice of Filing of a Proposed Rule Change To Amend the NYSE Price List To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs may, but are not required to,

pass-through their CAT fees to their clients, who may, in turn, pass their fees to their clients until they are imposed ultimately on the account that executed the transaction. See CAT Funding Model Approval Order at 62649.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) ²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 ("Historical Fee Rate 1") by dividing the Historical CAT Costs for Historical CAT Assessment 1 ("Historical CAT Costs 1") by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 ("Historical Recovery Period 1"), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that "[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment."²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 ("Excluded Costs"). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing "a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs."²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 ("Pre-FAM Period") and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that "the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan." CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, 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,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) *Technology Costs—Operating Fees*

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT

System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with

respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- 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;

³⁴ See Appendix C–108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services

on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
<i>Technology Costs</i>	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) *Technology Costs—Cloud Hosting Services*

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁵⁰ 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”),⁵¹ which covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones (“FAM Period 3”),⁵⁵ which

covers the period from January 1, 2021—December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of “Full Availability and Regulatory Utilization of Transactional Database Functionality” in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21/to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;

- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;

- Assisted with the Plan Processor transition;

- Provided assistance regarding communications with the industry regarding the CAT;

- Provided advice regarding Customer Account Information and PII;

- Provided support for litigation related to SEC exemptive orders; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;

- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁶ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁷ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBs's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBs from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Price List 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) to the Consolidated Audit Trail Funding Fees section of the Price List 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) to the Consolidated Audit Trail Funding Fees section of the Price List would state that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT

Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's Price List for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBs from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its Price List. 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

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) under the Consolidated Audit Trail Funding Fees section of the Price List.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Price List would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Price List 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) under the Consolidated Audit Trail Funding Fees section of the Price List.

Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Price List 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) to the Consolidated Audit Trail Funding Fees section of the Price List would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Price List 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) to the Consolidated Audit Trail Funding Fees section of the Price List 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) to the Consolidated Audit Trail Funding Fees section of the Price List 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) to the Consolidated Audit Trail Funding Fees section of the Price List would set 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 Price List describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that "[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange's Price List. Specifically, paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Price List states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee

by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that "[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹² The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁴ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b)

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that "[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees." CAT Funding Model Approval Order at 62667.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports.⁹⁵ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive

Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an

order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBsS paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze

the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations

(Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

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 Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory

Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which

is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain

instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large

Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹¹² *Id.* at 23079.

¹¹³ *Id.*

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether

trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the

extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the "2020 Verbal Quotes Order").¹²⁸ The Commission has stated that, "to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied."¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any

applicable Financial Accountability Milestones."¹³¹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date

of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.").

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the "2020 Verbal Quotes Exemption").

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in appendix C of the CAT NMS Plan, and incorporation of RFP requirements in appendix D at D-2.

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738–39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan

Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the

DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of appendix C of the CAT NMS Plan.

and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional

evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services

were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to

¹⁵⁵ *Id.*

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include

services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute

services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

• *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework

that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the

Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa

Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.
- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example,

DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identity management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the

Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the

Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives

were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described

above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself

from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/

acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms’ ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a “reconciliation” and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm’s internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm’s internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms’ Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm’s internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters’ ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices (“Additional Trade Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related

Continued

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required to Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant

complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT

LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to

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).

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485

participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT

Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section

6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ See Securities Exchange Act Rel. No. 99380 (Jan. 17, 2024), 89 FR 11078 (Feb. 13, 2024) (Notice of Filing of a Proposed Rule Change To Amend the NYSE Price List To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78o-3(b)(9).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

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 CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent

with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for

Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of

non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars)

and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D-4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized

an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of

Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of appendix D of the CAT NMS Plan.

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the

balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public

relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Price List would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover,

the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBSS 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 Price List. 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

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT

Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-53 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSE-2024-53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-53 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-21759 Filed 9-24-24; 8:45 am]

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²⁶⁹ 15 U.S.C. 78f(b)(8).

²⁷⁰ CAT Funding Model Approval Order at 62676-86.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).



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Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; NYSE National, 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. 34–101090; File No. SR–NYSENAT–2024–25]

Self-Regulatory Organizations; NYSE National, 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 18, 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 September 6, 2024, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE National Schedule of Fees and Rebates (“Fee Schedule”) to establish fees for Industry Members 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”) and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s Fee Schedule titled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and

at the Commission’s Public Reference Room.

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

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

A. Self-Regulatory Organization’s Statement of the Purpose of, and 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.³ On November 15, 2016, the Commission approved the CAT NMS Plan.⁴ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁵ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). 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.⁶

³ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁴ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

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

⁶ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

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).⁷

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’).”⁸ 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.⁹

⁷ 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.

⁸ Section 11.3(b) of the CAT NMS Plan.

⁹ 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.

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.¹⁰ 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.'" ¹¹ 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."¹² 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.¹³

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.¹⁴ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁵ 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.¹⁶

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁷

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

¹⁰ Section 11.3(b)(ii) of the CAT NMS Plan.

¹¹ Section 11.1(b) of the CAT NMS Plan.

¹² Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹³ 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.

¹⁴ See Securities Exchange Act Rel. No. 99368 (Jan. 17, 2024), 89 FR 10353 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹⁵ 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.

¹⁶ 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.

¹⁷ 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) ¹⁸

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) ¹⁹

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.²⁰

(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.”²¹ 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.”²² 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.

¹⁸ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

¹⁹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²⁰ 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.

²¹ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²² 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.²³

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, LLC²⁴ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁵ and FCAT, in turn, paid

²⁴ 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.

²⁵ 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.²⁶

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,"²⁷ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁸ However,

See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁶ 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.

²⁷ Appendix D-4 of the CAT NMS Plan at n.262.

²⁸ Appendix D-5 of the CAT NMS Plan.

²³ 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,²⁹ Phase 2a and Phase 2b Industry Member Data³⁰ (including certain linkages), as well as SIP Data,³¹ reference data and other types of Other Data.³² 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.³³

	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 Bidders³⁴ 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.³⁵

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.³⁶ 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;³⁷
- 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;

²⁹ See Section 6.3(d) of the CAT NMS Plan.

³⁰ 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.

³¹ See Section 6.5(a)(ii) of the CAT NMS Plan.

³² See appendix C–108 of the CAT NMS Plan.

³³ Note that the volume data described in this table does not include CAIS data.

³⁴ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁵ 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>.

³⁶ *Id.*

³⁷ 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;³⁸ 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.³⁹ 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.⁴⁰

(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.⁴¹

(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.⁴² 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

⁴¹ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴² 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>.

³⁸ The CAT website is <https://www.catnmsplan.com>.

³⁹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴⁰ 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.⁴³ 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.⁴⁴ 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

⁴³ Section 9.2 of the CAT NMS Plan.

⁴⁴ 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"),⁴⁵ 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.⁴⁶

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.⁴⁷ 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

⁴⁵ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁶ 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.

⁴⁷ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

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 1.⁴⁸

	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.

⁴⁸ Note that the volume data described in this table does not include CAIS data.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability

issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services.

The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public

relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁴⁹ 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.⁵⁰

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.⁵¹

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 2.⁵²

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions	
Participant—Equities	6
Participant—Options	116

⁴⁹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵⁰ 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.

⁵¹ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵² Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain

modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;

- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and

financial budgets, including budget to actual fluctuation analyses;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public

relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already

funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵³ 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.⁵⁴

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.⁵⁵

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 3.⁵⁶

⁵³ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁴ 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.

⁵⁵ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁶ 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,⁵⁷ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁸

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 2020.⁵⁹ 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 2021.⁶⁰

⁵⁷ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁸ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁵⁹ 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").

⁶⁰ 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.⁶¹

(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	

⁶¹ 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, 2017,⁶² which was the date by which Participants were required to begin reporting to the

CAT.⁶³ 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.⁶⁴ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁵ 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 31.⁶⁶ In addition, in establishing

⁶³ 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.

⁶⁴ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁵ 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.

⁶⁶ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from

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 2023,⁶⁷ 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.⁶⁸

(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."⁶⁹ 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.⁷⁰

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.

⁶⁷ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁸ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁶⁹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷⁰ CAT Funding Model Approval Order at 62664.

⁶² 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.

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.⁷¹

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.⁷²

(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.⁷³ 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.⁷⁴

(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.⁷⁵

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁶

(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.⁷⁷ 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.⁷⁸ Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would state 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."⁷⁹ 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.⁸⁰

(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 11.3.⁸¹

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

⁷¹ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷² Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷³ 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.

⁷⁴ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁵ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁶ *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.

⁷⁷ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁸ See proposed paragraph (a)(1)(B) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

⁷⁹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸⁰ 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.

⁸¹ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

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.⁸² Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section 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.⁸³ 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) to the Consolidated Audit Trail Funding Fees section 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) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section 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) to the Consolidated Audit Trail Funding Fees section of the Fee Schedule would set 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.⁸⁴ The Plan Processor has established a billing system for CAT fees.⁸⁵ 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.⁸⁶

⁸⁴ Section 11.4 of the CAT NMS Plan.

⁸⁵ 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.

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸² CAT Funding Model Approval Order at 62658, n.658.

⁸³ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

Accordingly, the Exchange previously has added this requirement to the Exchange's Fee Schedule. Specifically, paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section 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.⁸⁷

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁸ 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."⁸⁹ 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."⁹⁰ 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."⁹¹ 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"⁹² ("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

⁸⁷ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁸ 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.

⁸⁹ 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.

⁹⁰ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹¹ Section 11.6(b) of the CAT NMS Plan.

⁹² Section 11.6 of the CAT NMS Plan.

the date identified in the Participants' Quarterly Progress Reports.⁹³ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁴ 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, 2020.⁹⁵

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.’”⁹⁶ 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.⁹⁷

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.’”⁹⁸ 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

⁹³ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁴ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁵ 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.

⁹⁶ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁷ Phased Reporting Exemptive Relief Order at 23076–78.

⁹⁸ FAM Adopting Release at 31330, n.98.

orders is not required to be reported until Phase 2d.⁹⁹

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-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 2020,¹⁰⁰ 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.¹⁰¹ 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;¹⁰²
- “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.¹⁰³ 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, 2020.¹⁰⁴

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.¹⁰⁵

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-

¹⁰³ 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.”

¹⁰⁴ 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).

¹⁰⁵ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23078.

¹⁰⁰ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰¹ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰² Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

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 Report for the fourth quarter of 2021,¹⁰⁶ 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 2021,¹⁰⁷ FINRA retired OATS effective September 1, 2021.¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰

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

¹⁰⁶ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁷ *Id.*

¹⁰⁸ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹⁰⁹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹⁰ *Id.* at 23079.

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.¹¹¹

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).¹¹²

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."¹¹³ 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, 2021.¹¹⁴

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, 2021.¹¹⁵

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.¹¹⁶

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.¹¹⁷

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

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ 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).

¹¹⁷ Settlement Exemptive Order at 77129 n.13.

¹¹² *Id.* at 23079–80.

¹¹³ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁴ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹¹ *Id.*

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 3.¹¹⁸ 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.”¹¹⁹

¹¹⁸ 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.

¹¹⁹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

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).¹²⁰ 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.¹²¹

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).¹²² 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

¹²⁰ 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).

¹²¹ *Id.*

¹²² Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

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.”¹²³

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.”¹²⁴ 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.”¹²⁵ 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

¹²³ *Id.* at n.11.

¹²⁴ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁵ *Id.* at 10.

Quotes Order”).¹²⁶ 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.”¹²⁷ 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 3.¹²⁸

(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.”¹²⁹ 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 608.¹³⁰ Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³¹

(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 1.¹³² 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”).¹³³ 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

¹²⁶ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁷ 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.

¹²⁸ 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).

¹²⁹ *Id.* at 77129 n.12.

¹³⁰ 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).

¹³¹ 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.”)

¹³² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³³ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

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 613.¹³⁴

(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.¹³⁵

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.¹³⁶ 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.¹³⁷

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.¹³⁸ 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."¹³⁹

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.¹⁴⁰ 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')." ¹⁴¹ 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."¹⁴²

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").¹⁴³ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁴ 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."¹⁴⁵

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

¹³⁴ 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>.

¹³⁵ 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.

¹³⁶ 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.

¹³⁷ Rule 613 Adopting Release at 45738–39.

¹³⁸ Rule 613 Adopting Release at 45739.

¹³⁹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 11153.

¹⁴² *Id.* at 11159.

¹⁴³ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁴ See Selection Plan Approval Order.

¹⁴⁵ Selection Plan Approval Order at 11160.

basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The 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.¹⁴⁶

(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.¹⁴⁷

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."¹⁴⁸ 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.¹⁴⁹ The Participants filed two supplements to the request for exemptive relief.¹⁵⁰

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.¹⁵¹ 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.¹⁵²

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

¹⁴⁸ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁴⁹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵⁰ 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).

¹⁵¹ See 2016 Exemptive Order.

¹⁵² *Id.* at 11857.

¹⁴⁶ See CAT NMS Plan Approval Order at 84737.

¹⁴⁷ See Section D(11) of appendix C of the CAT NMS Plan.

could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵³

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁴

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.¹⁵⁵ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of

investors.¹⁵⁶ 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.”¹⁵⁷ 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.¹⁵⁸

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 2016.¹⁵⁹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶⁰

(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:

¹⁵³ *Id.*

¹⁵⁴ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁵ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁶ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁷ March 2013 Exemptive Order at 15772.

¹⁵⁸ *Id.* at 15773.

¹⁵⁹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶⁰ See CAT NMS Plan Approval Order.

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- 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.¹⁶¹

(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.¹⁶² 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."¹⁶³ 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.¹⁶⁴

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

¹⁶¹ 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).

¹⁶² See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶³ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁴ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁵

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, 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." ¹⁶⁶ 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." ¹⁶⁷
- *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." ¹⁶⁸

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." ¹⁶⁹ 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

¹⁶⁵ 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>.

¹⁶⁶ 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").

¹⁶⁷ Strategic Cloud Assessment Article.

¹⁶⁸ *Id.*

¹⁶⁹ Section 11.1(a)(i) of the CAT NMS Plan.

Costs, including . . . legal . . . costs.”¹⁷⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷¹ 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.¹⁷²

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.”¹⁷³ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁴ 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.”¹⁷⁵

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.”¹⁷⁶ 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

¹⁷³ CAT NMS Plan Approval Order at 84737.

¹⁷⁴ 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>.

¹⁷⁵ 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>.

¹⁷⁶ CAT Funding Model Approval Order at 62650.

¹⁷⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷² Settlement Exemptive Order at 77129–30.

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.”¹⁷⁷ 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.”¹⁷⁸ 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.¹⁷⁹ 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.”¹⁸⁰ 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 2021.¹⁸¹
- 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.¹⁸²

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.

¹⁸⁰ *Id.* at 23078–79, n.70.

¹⁸¹ 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>).

¹⁸² Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

(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, 2021.¹⁸³
- The full, final CAIS Technical Specifications were published on January 29, 2021.

• Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁴

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

¹⁸³ 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>).

¹⁸⁴ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁷⁷ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁸ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁹ See Phased Reporting Exemptive Relief Order at 23079–80.

these remaining issues,¹⁸⁵ 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.¹⁸⁶

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.”¹⁸⁷ 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.”¹⁸⁸ 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.¹⁸⁹ 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.¹⁹⁰ 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.¹⁹¹ 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.¹⁹²

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.¹⁹³ 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

¹⁹⁰ See, e.g., NASDAQ Equities Rule 4626.

¹⁹¹ 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).

¹⁹² See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹³ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁵ 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>).

¹⁸⁶ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁷ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁸ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Costs, including . . . consulting”¹⁹⁴ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' 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,¹⁹⁵ 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 31.¹⁹⁶ 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

¹⁹⁵ 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>).

¹⁹⁶ 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).

¹⁹⁴ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other 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.¹⁹⁷ 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,

¹⁹⁷ "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 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;¹⁹⁸ (2) trade details schemas;¹⁹⁹ and (3) CAT billing scenarios.²⁰⁰

- *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.²⁰¹ 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.²⁰² 485 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.²⁰³

¹⁹⁸ 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).

¹⁹⁹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰⁰ 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>).

²⁰¹ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰² CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰³ 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>).

• *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.²⁰⁴

• *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.²⁰⁵ 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 2024.²⁰⁶ 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,²⁰⁷ 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,²⁰⁸ 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,²⁰⁹ 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.²¹⁰ 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."²¹¹ 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

²⁰⁴ 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).

²⁰⁵ 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.

²⁰⁶ See Securities Exchange Act Rel. No. 99368 (Jan. 17, 2024), 89 FR 10353 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

²⁰⁷ 15 U.S.C. 78f(b)(6).

²⁰⁸ 15 U.S.C. 78f(b)(4).

²⁰⁹ 15 U.S.C. 78f(b)(8).

²¹⁰ See Section 6(b)(1) of the Exchange Act.

²¹¹ CAT NMS Plan Approval Order at 84697.

implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹² Similarly, in approving the CAT Funding Model, the SEC

concluded that the CAT Funding Model met this standard.²¹³ 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.²¹⁴ 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.²¹⁵ 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.²¹⁶ Indeed, the actual costs of the CAT are far in excess of the original estimated

²¹⁵ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁶ 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.

²¹² CAT NMS Plan Approval Order at 84696.

²¹³ CAT Funding Model Approval Order at 62686.

²¹⁴ *Id.* at 62662–63.

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 day²¹⁷ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁸ 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.²¹⁹

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.²²⁰

(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.²²¹ 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.²²² 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.²²³ The services performed by FCAT for each period and the costs related to such services are described above.²²⁴

(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.²²⁵ 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.²²⁶ The services performed by Kingland for each period and the costs for each period are described above.²²⁷

(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.²²⁸ 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

²²³ 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.

²²⁴ *Id.*

²²⁵ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁶ 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.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁷ Appendix D–4 of the CAT NMS Plan at n.262.

²¹⁸ CAT NMS Plan Approval Order at 84801.

²¹⁹ 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.

²²⁰ 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).

²²¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²² See Section 3(a)(2)(B)(i)(b) above.

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.²²⁹ 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.²³⁰ 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.²³¹ 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.²³² 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.²³³ In addition, as described above, CAT LLC determined that is was

appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁴

(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.²³⁵ 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.²³⁶

(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.²³⁷ 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 employees²³⁸ 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.²³⁹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴⁰ 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.²⁴¹ 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.²⁴²

(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.²⁴³ 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."²⁴⁴ 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.²⁴⁵ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁶

(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.²⁴⁷ CAT LLC determined that the professional

²³⁹ 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.

²⁴⁰ See Section 3(a)(2)(B)(i)(g) above.

²⁴¹ 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.

²⁴² *Id.*

²⁴³ See Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁴ See Section 4.1.5 of appendix D of the CAT NMS Plan.

²⁴⁵ 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.

²⁴⁶ *Id.*

²⁴⁷ See Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²²⁹ 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.

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ 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.

²³² *Id.*

²³³ See Section 3(a)(2)(B)(i)(e) above.

²³⁴ See Section 3(a)(2)(B)(i)(b) above.

²³⁵ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁶ 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.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁸ 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).

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.²⁴⁸ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁴⁹ 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.²⁵⁰

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.²⁵¹ 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.²⁵² 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.²⁵³

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.²⁵⁴

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.²⁵⁵

(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.²⁵⁶ 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.²⁵⁷ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁸ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁵⁹ 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 31.²⁶⁰ 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

²⁴⁸ See Section 3(a)(2)(B)(i)(i) above.

²⁴⁹ 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.

²⁵⁰ *Id.*

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 *Id.*

²⁵⁶ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁷ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁸ 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.

²⁵⁹ *Id.*

²⁶⁰ 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.

Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶¹

(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.²⁶² Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section 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),²⁶³ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁴ 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.²⁶⁵ In approving the CAT Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁶ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding

Model provides for an equitable allocation of fees.

(4) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of Historical CAT Assessments calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the Fee Schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁷ 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

²⁶¹ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶² CAT Funding Model Approval Order at 62658, n.658.

²⁶³ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁴ *Id.*

²⁶⁵ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁶ CAT Funding Model Approval Order at 62629.

²⁶⁷ 15 U.S.C. 78f(b)(8).

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.²⁶⁸ 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 solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁶⁹ and Rule 19b-4(f)(2) thereunder,²⁷⁰ 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-NYSENAT-2024-25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSENAT-2024-25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSENAT-2024-25 and should be submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷¹

Sherry R. Haywood,
Assistant Secretary.

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BILLING CODE 8011-01-P

²⁶⁸ CAT Funding Model Approval Order at 62676-86.

²⁶⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷⁰ 17 CFR 240.19b-4(f)(2).

²⁷¹ 17 CFR 200.30-3(a)(12).



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Part VII

Securities and Exchange Commission

Self-Regulatory Organizations; NYSE Arca, 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. 34–101088; File No. SR–NYSEARCA–2024–77]

Self-Regulatory Organizations; NYSE Arca, 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 18, 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 September 9, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (“Equities Fee Schedule”) and the NYSE Arca Options Fees and Charges (“Options Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Equities Fee Schedule and the Options Fee Schedule titled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT

Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁷ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was

reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁸

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ Under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See NYSE Arca Rule 11.6810(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 NYSE Arca Rule 11.6810.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to "file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as 'Consolidated Audit Trail Funding Fees.'" ¹³ The Plan further states that "Participants will be required to file

with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." ¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁷ The CAT NMS Plan defines a "CAT Executing Broker" to mean:

(a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as

the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁹

No.	Field name	Data type	Description	Include key
12.n.8/13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT) ²⁰

No.	Field name	Data type	Description	Include key
16.n.13/17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order ..	R

¹² Section 11.3(b)(ii) of the CAT NMS Plan.

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ See Securities Exchange Act Rel. No. 99357 (Jan. 17, 2024), 89 FR 10735 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges and the NYSE Arca Options Fees and Charges To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

¹⁷ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and 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.

¹⁹ See Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf ("CAT Reporting Technical Specifications for Plan Participants").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²¹

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

(2) Calculation of Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM period (prior to June 22, 2020) *
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan. In approving the CAT Funding

Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken

by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, 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,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

²⁵ With respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

Data.³⁴ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period),

the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- 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;

³⁴ See Appendix C–108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland's CAIS-related services

on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT. Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other change to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

WilmerHale's billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale's performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial

statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and made publicly available.⁴⁵ The professional and administration costs include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). Public relations services were

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the

FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well

as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

• Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications

and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1,

⁵⁰ 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”),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-

third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, with respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵³ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test

entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT,

Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (e.g., amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which

covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
<i>Technology Costs</i>	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production

environments, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁸

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, with respect to certain costs that were "appropriately excluded," such excluded costs relate to the amortization of capitalized technology costs, which are amortized

over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁸ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided technical support and assistance with connectivity, data access, and user support, including the

use of CAT Data and query tools, for Participants and the SEC staff.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶²

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶² As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). As discussed above, such public relations services were important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶³ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;

- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;

- Assisted with the Plan Processor transition;

- Provided assistance regarding communications with the industry regarding the CAT;

- Provided advice regarding Customer Account Information and PII;

- Provided support for litigation related to SEC exemptive orders; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;

- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were

required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. Under the CAT NMS Plan, the Operating Committee is required to "reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁷²

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁸⁰ Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would state that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each

Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's Equities Fee Schedule and the Options Fee Schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) under the Consolidated Audit Trail Funding Fees section of the Fee Schedule.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ("CEBB") and/or the CAT Executing Broker for the Seller ("CEBS") (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) under the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule.

Proposed paragraph (a)(1)(A) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options 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) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would set 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 the Equities Fee Schedule and the Options Fee Schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states that "[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023, and Nov. 7, 2023), each available on the CAT website.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

(C) Failure To Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange's Equities Fee Schedule and the Options Fee Schedule. Specifically, paragraph (b)(2) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule states:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.⁸⁹

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide

CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹¹ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in

Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

⁹¹ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that "[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees." CAT Funding Model Approval Order at 62667.

response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) Financial Accountability Milestones

The CAT NMS Plan states that "[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹² The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁴ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22,

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT

2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports.⁹⁵ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data.

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁸ The Phase 2a Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;

- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;

- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;

- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;

- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;

- Manual and Electronic Capture Time for Manual Order Events;

- Special handling instructions for the original receipt or origination of an order during Phase 2a; and

- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰⁰ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical

¹⁰⁴ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain *[sic]* two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. This Financial Accountability Milestone shall be considered complete as of the date identified

in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms;

(5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer orders(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”)—Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹¹

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹²

The Phase 2d Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order. "Phase 2d Industry Member Data" is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter's order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX)

that meets this definition is reportable in Phase 2d for options.¹¹³

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data will include verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS

Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;

• "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and

- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹³ *Id.*

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹² *Id.* at 23079.

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain *[sic]* two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry

Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the

Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission's May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the "2023 Verbal Quotes Exemption") affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the "2020 Verbal Quotes Order").¹²⁸ The Commission has stated that, "to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied."¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As

described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹³¹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of

reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the "2020 Verbal Quotes Exemption").

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC’s adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential

alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC’s adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information (“RFI”) process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process “to determine the best technical solution for developing a consolidated audit trail.” FIF suggested that the Commission “should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group.” Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission’s initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, “[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal (‘RFP’) was necessary to ensure that potential alternative solutions to creating the

consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.”¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴² As the SEC described in its approval order for the Selection Plan, “[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP (‘Bids’)—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail (‘Plan Processor’).”¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it “believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail.”¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders’ questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the “Selection Plan”).¹⁴⁵ The Commission approved the Selection

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested “that the SROs should select the processor through a ‘request for proposal.’” Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738–39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) (“Selection Plan Approval Order”).

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that “it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.”¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set

forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements

for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of Appendix C of the CAT NMS Plan.

or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in

order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan

during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff,

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772;

December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

¹⁵⁴ *Id.* at 11857.

¹⁵⁵ *Id.*

including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (e.g., congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements,

and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly,

Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (*e.g.*, OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not

geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (*e.g.*, Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (*e.g.*, organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁸ See, *e.g.*, Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷² In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that

it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the

Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁷

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total

\$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large

Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . .

public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to

the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . consulting . . ." costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . consulting"¹⁹⁶ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades*: Reconciling the CAT invoice amount to the underlying trades provided by CAT;

- *Matching Trades to Books and Records*: Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification*: Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC

provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members’ ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters’ Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms’ ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters’ ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide

technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT’s perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms’ ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for

many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters’ ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may “over-collect” Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

¹⁹⁹ “FINRA charges a Regulatory Transaction Fee (“RTF”) to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years.” Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in

November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This

filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰⁹ which requires, among other things, that the Exchange's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(4) of the Act,²¹⁰ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act,²¹¹ which requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be "so organized and [have] the capacity to be able to carry out the purposes" of the Act and "to comply, and . . . to enforce compliance by its members and persons associated with its members," with the provisions of the Exchange Act.²¹² Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act,

Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ See Securities Exchange Act Rel. No. 99357 (Jan. 17, 2024), 89 FR 10735 (Feb. 13, 2024) (Notice of Filing of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges and the NYSE Arca Options Fees and Charges To Establish

and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange's facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹³ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that "[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves." Per Section 11.1(b) of the CAT NMS Plan, the Exchange has filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan "is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act."²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for Historical CAT Assessment 1 Is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the

transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments as set forth in the CAT NMS Plan. Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered. Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs.

In accordance with this requirement, the Exchange has set forth the amount and type of Historical CAT Costs 1 for each of these categories of costs above.

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of

²¹³ CAT NMS Plan Approval Order at 84697.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁸ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records

per day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and an amendment to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (e.g., the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including the operational and security criteria. Over time more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and

the level of fees assessed to support those costs.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (e.g., management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.²²⁴ CAT LLC also determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.²²⁵ The services performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 FR 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the FCAT-negotiated fees for Kingland's CAIS-related services, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee, and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory issues associated with the CAT, the scope of the necessary legal services are

²³² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ See Section 3(a)(2)(B)(i)(e) above.

²³⁶ See Section 3(a)(2)(B)(i)(b) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

²³⁸ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴¹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, *e.g.*, CTA Plan and CQ Plan.

²⁴² See Section 3(a)(2)(B)(i)(g) above.

²⁴³ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which costs are also at market rates.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The

hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by

NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

(B) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by counting executed equivalent shares in the same manner as it will count executed equivalent shares for CAT billing purposes.

²⁴⁵ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁷ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the

Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) to the Consolidated Audit Trail Funding Fees section of the Equities Fee Schedule and the Options Fee Schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act, including the formula for calculating Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT

Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBSS 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),

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, the Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and specificity in the Fee Schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

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

Section 6(b)(8) of the Act²⁶⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that Historical CAT Assessment 1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce Historical CAT Assessment 1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issue between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.²⁷⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. Historical CAT Assessment 1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-77 on the subject line.

Paper Comments

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

All submissions should refer to file number SR-NYSEARCA-2024-77. 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-NYSEARCA-2024-77 and should be

²⁷⁰ CAT Funding Model Approval Order at 62676-86.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁶⁹ 15 U.S.C. 78f(b)(8).

submitted on or before October 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

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Part VIII

Department of Justice

Drug Enforcement Administration

Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024; Notices

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****[Docket No. DEA-1228A]****Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024****AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** Notice with request for comments.

SUMMARY: The Drug Enforcement Administration proposes to adjust the 2024 aggregate production quotas for several controlled substances in schedules I and II of the Controlled Substances Act. Additionally, as DEA announced in an April 29, 2024 letter to DEA-registered manufacturers, procurement quotas for commercial manufacturing of a schedule II controlled substance will be calculated on a semi-annual basis, except for injectable drug products containing schedule II controlled substances, which will be calculated on an annual basis.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.13(c) and 1315.13(d). Electronic comments must be submitted, and written comments must be postmarked, on or before October 25, 2024. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the **Federal Register** a final order establishing the 2024 adjusted aggregate production quotas for schedule I and II controlled substances, and an adjusted assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, as relevant.

ADDRESSES: To ensure proper handling of comments, please reference "Docket

No. DEA-1228A" on all correspondence, including any attachments. DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Heather E. Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: 571-776-3882.

SUPPLEMENTARY INFORMATION:**Posting of Public Comments**

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your

comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at <http://www.regulations.gov> for easy reference.

Legal Authority and Background

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas (APQ) for each basic class of controlled substance listed in schedules I and II and for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of DEA pursuant to 28 CFR 0.100.

DEA established the 2024 APQ for substances in schedules I and II and the assessment of annual needs (AAN) for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine on January 3, 2024.¹ That order stipulated that, in accordance with 21 CFR 1303.13 and 1315.13, all APQ and AAN are subject to adjustment. DEA published a Final Order revising the 2024 lisdexamphetamine and d-amphetamine (for conversion) APQ on September 5, 2024.²

¹ 89 FR 407.

² Adjustment to the Aggregate Production Quota for Lisdexamphetamine and d-Amphetamine (for Conversion) for 2024, 89 FR 72424 (Sept. 5, 2024).

Analysis for Proposed Adjusted 2024 Aggregate Production Quotas and Assessment of Annual Needs

DEA proposes to adjust the established 2024 APQ for certain schedule I and II controlled substances and the AAN for certain list I chemicals to be manufactured in the United States in 2024 to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

Factors for Determining the Proposed Adjustments

In determining the proposed adjustments, the Administrator has taken into account the factors in 21 CFR 1303.13 (adjustment of APQ for controlled substances) and 21 CFR 1315.13 (adjustment of the AAN for ephedrine, pseudoephedrine, and phenylpropanolamine). The Administrator is authorized to increase or reduce the APQ and the AAN at any time.³

DEA determined whether to propose an adjustment of the APQ for 2024 by considering the factors found at 21 CFR 1303.13(b):

(1) Changes in the demand for that class, changes in the national rate of net disposal of the class, changes in the rate of net disposal of the class by registrants holding individual manufacturing quotas for that class, and changes in the extent of any diversion in the class;

(2) Whether any increased demand for that class, the national and/or individual rates of net disposal of that class are temporary, short term, or long term;

(3) Whether any increased demand for that class can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the aggregate production quota, taking into account production delays and the probability that other individual manufacturing quotas may be suspended pursuant to [21 CFR] 1303.24(b);

(4) Whether any decreased demand for that class will result in excessive inventory accumulation by all persons registered to handle that class (including manufacturers, distributors, practitioners, importers, and exporters), notwithstanding the possibility that individual manufacturing quotas may be suspended pursuant to [21 CFR] 1303.24(b) or abandoned pursuant to [21 CFR] 1303.27;

(5) Other factors affecting medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Administrator finds relevant, including changes in the currently

accepted medical use in treatment with the class or the substances which are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

DEA also considered updated information obtained from 2023 year-end inventories, 2023 disposition data submitted by quota applicants, changes in estimates of the medical needs of the United States, export requirements, and other information made available to DEA after the initial APQ and AAN had been established. Additional factors the Administrator considered in calculating the APQ, but not the AAN, include product development requirements of both bulk and finished dosage form manufacturers.

After considering the changes in the extent of diversion of all controlled substances, as required by 21 CFR 1303.13(b)(1), DEA has determined that any changes from the initial calculations are slight and not statistically significant from the estimates of diversion that DEA applied to the initial APQ valuations.

DEA determined whether to propose an adjustment of the AAN for 2024 by considering the factors found at 21 CFR 1315.13(b) and summarized below:

(1) Changes in the demand for that chemical, changes in the national rate of net disposal of the chemical, and changes in the rate of net disposal of the chemical by registrants holding individual manufacturing or import quotas for that chemical;

(2) Whether any increased demand for that chemical, the national and/or changes in individual rates of net disposal of that chemical are temporary, short term, or long term;

(3) Whether any increased demand for that chemical can be met through existing inventories, increased individual manufacturing quotas, or increased importation, without increasing the assessment of annual needs, taking into account production delays and the probability that other individual manufacturing quotas may be suspended pursuant to [21 CFR] 1315.24(b);

(4) Whether any decreased demand for that chemical will result in excessive inventory accumulation by all persons registered to handle that chemical (including manufacturers, distributors, importers, and exporters), notwithstanding the possibility that individual manufacturing quotas may be suspended pursuant to [21 CFR] 1315.24(b) or abandoned pursuant to [21 CFR] 1315.27;

(5) Other factors affecting medical, scientific, research, industrial, and importation needs in the United States, lawful export requirements, and reserve stocks, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the chemical

or the substances that are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

In evaluating whether there is a need for adjustment of the 2024 AAN for list I chemicals, DEA used the calculation methodology previously described in the 2010 and 2011 AAN.⁴ DEA considered the total net disposals of the list I chemicals for the current and preceding two years, actual and estimated inventories, projected demand, industrial use, and export requirements from data provided by DEA registered manufacturers and importers on the relevant quota application forms.⁵

Additional Considerations Applicable to Covered Controlled Substances

When setting APQ, the Administrator must estimate the amount of diversion of any substance that is considered a "covered controlled substance."⁶ The covered controlled substances are fentanyl, oxycodone, hydrocodone, oxymorphone, and hydromorphone.⁷ DEA is required to "make appropriate quota reductions, as determined by the [Administrator], from the quota the [Administrator] would have otherwise established had such diversion not been considered."⁸ When estimating diversion, the Administrator "shall consider information" that she, in consultation with the Secretary of Health and Human Services, "determines reliable on rates of overdose deaths and abuse and overall public health impact related to the covered controlled substance in the United States;" and "may take into consideration" whatever other sources of information she determines reliable.⁹

DEA sent letters to the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the states in March, April, and May 2024 requesting overdose death and overprescribing data that could be considered in estimating diversion. DEA received information from the CDC in May 2024, the FDA in June 2024, and has begun receiving Prescription Data Monitoring Program

⁴ 74 FR 60294 (Nov. 20, 2009); 75 FR 79407 (Dec. 20, 2010).

⁵ 74 FR 60294 (Nov. 20, 2009); 75 FR 79407 (Dec. 20, 2010).

⁶ 21 U.S.C. 826(i)(1)(A).

⁷ 21 U.S.C. 826(i)(1).

⁸ All functions vested in the Attorney General by the CSA have been delegated to the Administrator of DEA. 28 CFR 0.100(b); 21 U.S.C. 826(i)(1)(C).

⁹ 21 U.S.C. 826(i)(1)(B).

³ 21 CFR 1303.13(a), 1315.13(a).

(PDMP) data from the states. DEA considered this information in developing the estimates of diversion for the five covered controlled substances for this proposed adjustment.

DEA also aggregated data for each covered controlled substance from Drug Theft and Loss Reports to determine the estimates of diversion. DEA gathered data involving employee theft, break-ins, armed robberies, and material lost in transit. DEA calculated the metric weight in grams of each active pharmaceutical ingredient (API) of the controlled substances being diverted as identified in these reports. In calculating the estimates of diversion, DEA utilized the same methodology as published in the Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2024.¹⁰ Below, DEA provides an updated chart showing estimations of diversion for each of the covered controlled substances.

DIVERSION ESTIMATES FOR 2024 (g)

Fentanyl	112
Hydrocodone	124,170
Hydromorphone	1,137
Oxycodone	263,236
Oxymorphone	165

Implementation of Semi-Annual Quota Allotment

For the 2024 quota year, DEA announced that it intended to allocate procurement quotas to DEA-registered manufacturers of schedule II controlled substances on a quarterly basis, in order to help DEA prevent shortages and be more nimble in its administration of the quota program. After the announcement, DEA met with several manufacturers to discuss the impact of that change. Numerous manufacturers asked DEA to consider allocating quotas semi-annually to assist with production planning and execution. DEA understands and appreciates the

complexities of the supply chain. In light of the discussions with manufacturers, as well as meetings with FDA discussing their statutory obligations for drug availability to meet legitimate patients' needs, input from health associations in foreign countries, and consideration of the continuing issues with the supply chain in the aftermath of the COVID-19 pandemic, DEA determined that it would and will allocate procurement quotas for schedule II controlled substances on a semi-annual basis, except that it would and will allocate procurement quotas for injectable drug products containing schedule II controlled substances on an annual basis. DEA announced this change in a letter to DEA-registered manufacturers on April 29, 2024. No further change is being implemented at this time. DEA remains committed to ensuring that all patients with legitimate medical need can access appropriately prescribed medications that are manufactured domestically.

Proposed Adjustments for the 2024 Aggregate Production Quotas and Assessment of Annual Needs

DEA is proposing increases to the APQ for the following schedule I substances: psilocybin and psilocyn. These proposed increases are to support research and clinical trials by DEA-registered schedule I researchers. These proposed increases demonstrate DEA's support for research with schedule I controlled substances. The proposed increases reflect research and development needs as part of the process for seeking the FDA approval of new drug products.

DEA is proposing increases to the APQ for the following schedule II substances: noroxymorphone (for conversion), oripavine, and oxymorphone (for conversion). These proposed increases are necessary to meet manufacturing needs and increased consumption of naloxone products as standard treatment for opioid overdose. These substances are part of the synthesis pathway to manufacture naloxone products. On

March 13, 2024, the "White House Challenge to Save Lives from Overdose" was announced in support of the Administration's Unity Agenda efforts to address the opioid overdose crisis.¹¹ The challenge is a nationwide initiative to increase training, awareness, and access to lifesaving opioid overdose reversal medications. The FDA has approved two over the counter (OTC) naloxone products for the emergency treatment of opioid overdose.¹² As a result of the White House Challenge and efforts by the Department of Health and Human Services to help recipients of State and Tribal Opioid Response Grants increase distribution of opioid overdose reversal agents, DEA is expecting medical usage of naloxone to continue to rise in 2024. The proposed increase to the APQ of noroxymorphone (for conversion), oripavine and oxymorphone (for conversion) reflects this increasing medical usage of naloxone.

DEA is proposing decreases to the following APQ: fentanyl, hydrocodone (for sale), hydromorphone, and oxycodone (for sale). These proposed decreases are based on adjustments to the diversion estimates for calendar year 2024.

DEA established the 2024 APQ for substances in schedules I and II on January 3, 2024.¹³ Subsequent to that publication, DEA published in the **Federal Register** a final rule to permanently schedule 2-methyl AP-237 under the CSA.¹⁴ As a result, this substance is subject to CSA schedule I controls and DEA is proposing to assign an individual APQ for this substance pursuant to 21 U.S.C. 826 and 21 CFR part 1303.

The Administrator, therefore, proposes to adjust the 2024 APQ for the schedule I and II controlled substances noroxymorphone (for conversion), oripavine, oxymorphone (for conversion), psilocybin, psilocyn, and 2-methyl AP-237. The proposed adjusted APQ and AAN, as expressed in grams of anhydrous acid or base, are as follows:

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
New Temporary Controlled Schedule I Substances		
4F-MDMB-BUTICA	30	no change

¹⁰ 88 FR 75312 (November 2, 2023).

¹¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/13/fact-sheet-biden-harris-administration-launches-the-white-house-challenge-to-save-lives-from-overdose/>.

¹² <https://www.fda.gov/news-events/press-announcements/fda-approves-second-over-counter-naloxone-nasal-spray-product>.

¹³ 89 FR 407.

¹⁴ 89 FR 18793 (March, 15, 2024).

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
5F-EDMB-PICA	30	no change
ADB-4en-PINACA	30	no change
Clonazepam	30	no change
CUMYL-PEGACLONE	30	no change
Diclazepam	30	no change
Etizolam	30	no change
Flualprazolam	30	no change
Flubromazolam	30	no change
MDMB-4en-PINACA	30	no change
MMB-FUBICA	30	no change

Schedule I

-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20	no change
1-(1-Phenylcyclohexyl)pyrrolidine	30	no change
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10	no change
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30	no change
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30	no change
1-[1-(2-Thienyl)cyclohexyl]piperidine	15	no change
2'-fluoro 2-fluorofentanyl	30	no change
1-Benzylpiperazine	25	no change
1-Methyl-4-phenyl-4-propionoxypiperidine	10	no change
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30	no change
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30	no change
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	30	no change
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P)	30	no change
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	100	no change
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)	30	no change
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30	no change
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)	25	no change
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30	no change
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	30	no change
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25	no change
2,5-Dimethoxy-4-n-propylthiophenethylamine	25	no change
2,5-Dimethoxyamphetamine	25	no change
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	30	no change
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	30	no change
2-Methyl AP-237	0	30
3,4,5-Trimethoxyamphetamine	30	no change
3,4-Methylenedioxyamphetamine (MDA)	12,000	no change
3,4-Methylenedioxymethamphetamine (MDMA)	12,000	no change
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40	no change
3,4-Methylenedioxy-N-methylcathinone (methylonone)	5,200	no change
3,4-Methylenedioxypropylvalerone (MDPV)	35	no change
3-FMC; 3-Fluoro-N-methylcathinone	25	no change
3-Methylfentanyl	30	no change
3-Methylmethcathinone	30	no change
3-Methylthiofentanyl	30	no change
4,4'-Dimethylaminorex	30	no change
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30	no change
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	5,100	no change
4-Chloro- α -pyrrolidinovalerophenone (4-chloro- α -PVP)	25	no change
4-CN-Cumyl-Butinaca	25	no change
4-Fluoroisobutyl fentanyl	30	no change
4F-MDMB-BINACA	30	no change
4-FMC; Flephedrone	25	no change
4-MEC; 4-Methyl-N-ethylcathinone	25	no change
4-Methoxyamphetamine	150	no change
4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (α -PiHP)	30	no change
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25	no change
4-Methylaminorex	25	no change
4-Methyl-N-methylcathinone (mephedrone)	45	no change
4-Methyl- α -ethylaminopentiophenone (4-MEAP)	25	no change
4-Methyl- α -pyrrolidinohexiophenone (MPPH)	25	no change
4'-Methyl α -acetyl fentanyl	30	no change
4-Methyl- α -pyrrolidinopropiophenone (4-MePPP)	25	no change
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50	no change
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40	no change
5F-AB-PINACA; (1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25	no change

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	25	no change
5F-CUMYL-PTAICA; 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3carboximide	25	no change
5F-CUMYL-PINACA	25	no change
5F-EDMB-PINACA	25	no change
5F-MDMB-PICA	25	no change
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	25	no change
5F-APINACA; 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	25	no change
5-Fluoro-PB-22; 5F-PB-22	25	no change
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1Hindol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25	no change
5-Methoxy-3,4-methylenedioxyamphetamine	25	no change
5-Methoxy-N,N-diisopropyltryptamine	25	no change
5-Methoxy-N,N-dimethyltryptamine	11,000	no change
AB-CHMINACA	30	no change
AB-FUBINACA	50	no change
AB-PINACA	30	no change
ADB-BUTINACA	30	no change
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30	no change
Acetorphine	25	no change
Acetyl Fentanyl	100	no change
Acetyl-alpha-methylfentanyl	30	no change
Acetyldihydrocodeine	30	no change
Acetylmethadol	25	no change
Acryl Fentanyl	25	no change
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50	no change
AH-7921	30	no change
All other tetrahydrocannabinol	1,166,130	no change
Allylprodine	25	no change
Alphacetylmethadol	25	no change
alpha-Ethyltryptamine	25	no change
Alphameprodine	25	no change
Alphamethadol	25	no change
alpha-Methylfentanyl	30	no change
alpha-Methylthiofentanyl	30	no change
alpha-Methyltryptamine (AMT)	25	no change
alpha-Pyrrolidinobutiophenone (α -PBP)	25	no change
alpha-pyrrolidinoheptaphenone (PV8)	25	no change
alpha-pyrrolidinohexabophenone (alpha-PHP)	25	no change
alpha-Pyrrolidinopentiophenone (α -PVP)	25	no change
Amineptine	30	no change
Aminorex	25	no change
Anileridine	20	no change
APINCA, AKB48 (N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	25	no change
Benzethidine	25	no change
Benzylmorphine	30	no change
Betacetylmethadol	25	no change
beta-Hydroxy-3-methylfentanyl	30	no change
beta-Hydroxyfentanyl	30	no change
beta-Hydroxythiofentanyl	30	no change
beta-Methyl fentanyl	30	no change
beta'-Phenyl fentanyl	30	no change
Betameprodine	25	no change
Betamethadol	4	no change
Betaprodine	25	no change
Brorphine	30	no change
Bufotenine	15	no change
Butonitazene	30	no change
Butylone	25	no change
Butyryl fentanyl	30	no change
Cathinone	40	no change
Clonitazene	25	no change
Codeine methylbromide	30	no change
Codeine-N-oxide	192	no change
Crotonyl Fentanyl	25	no change
Cyclopentyl Fentanyl	30	no change
Cyclopropyl Fentanyl	20	no change
Cyprenorphine	25	no change
d-9-THC	1,523,040	no change
Desomorphine	25	no change
Dextromoramide	25	no change
Diapromide	20	no change
Diethylthiambutene	20	no change

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
Diethyltryptamine	25	no change
Difenoxin	9,300	no change
Dihydromorphine	639,954	no change
Dimenoxadol	25	no change
Dimepheptanol	25	no change
Dimethylthiambutene	20	no change
Dimethyltryptamine	11,000	no change
Dioxyaphetyl butyrate	25	no change
Dipipanone	25	no change
Drotebanol	25	no change
Ethylmethylthiambutene	25	no change
Ethylone	25	no change
Etodesnitazene	30	no change
Etonitazene	25	no change
Etorphine	30	no change
Etoxidine	25	no change
Eutylone	30	no change
Fenethylamine	30	no change
Fentanyl carbamate	30	no change
Fentanyl related substances	600	no change
Flunitazene	30	no change
FUB-144	25	no change
FUB-AKB48	25	no change
Fub-AMB, MMB-Fubinaca, AMB-Fubinaca	25	no change
Furanyl fentanyl	30	no change
Furethidine	25	no change
gamma-Hydroxybutyric acid	29,417,000	no change
Heroin	150	no change
Hydromorphanol	40	no change
Hydroxypethidine	25	no change
Ibogaine	150	no change
Isobutyl Fentanyl	25	no change
Isotonitazene	25	no change
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35	no change
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	45	no change
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	45	no change
JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30	no change
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30	no change
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35	no change
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30	no change
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30	no change
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30	no change
Ketobemidone	30	no change
Levomoramide	25	no change
Levophenyacetylmorphan	25	no change
Lysergic acid diethylamide (LSD)	1,200	no change
MAB-CHMINACA; ADB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	30	no change
MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	30	no change
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30	no change
MMB-CHMICA-(AMB-CHIMCA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate ..	25	no change
Marijuana	6,675,000	no change
Marijuana extract	1,000,000	no change
Mecloqualone	30	no change
Mescaline	1,200	no change
Mesocarb	30	no change
Methaqualone	60	no change
Methcathinone	25	no change
Methiopropamine	30	no change
Methoxetamine	30	no change
Methoxyacetyl fentanyl	30	no change
Methyldesorphine	5	no change
Methyldihydromorphine	25	no change
Metodesnitazene	30	no change
Metonitazene	30	no change
Morpheridine	25	no change
Morphine methylbromide	5	no change
Morphine methylsulfonate	5	no change
Morphine-N-oxide	150	no change
MT-45	30	no change

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
Myrophine	25	no change
NM2201: Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	25	no change
N,N-Dimethylamphetamine	25	no change
Naphyrone	25	no change
N-Ethyl-1-phenylcyclohexylamine	25	no change
N-Ethyl-3-piperidyl benzilate	10	no change
N-Ethylamphetamine	24	no change
N-Ethylhexedrone	25	no change
N-Ethylpentylone, ephylone	30	no change
N-Hydroxy-3,4-methylenedioxyamphetamine	24	no change
Nicocodeine	25	no change
Nicomorphine	25	no change
N-methyl-3-piperidyl benzilate	30	no change
N-Pyrrolidino Etonitazene	30	no change
Noracymethadol	25	no change
Norlevorphanol	2,550	no change
Normethadone	25	no change
Normorphine	40	no change
Norpipanone	25	no change
Ocfentanil	25	no change
ortho-Fluoroacryl fentanyl	30	no change
ortho-Fluorobutryl fentanyl	30	no change
Ortho-Fluorofentanyl,2-Fluorofentanyl	30	no change
ortho-Fluoroisobutryl fentanyl	30	no change
ortho-Methyl acetylfentanyl	30	no change
ortho-Methyl methoxyacetyl fentanyl	30	no change
Para-Chlorisobutryl fentanyl	30	no change
Para-fluorobutryl fentanyl	25	no change
Para-fluorofentanyl	25	no change
para-Fluoro furanyl fentanyl	30	no change
Para-Methoxybutryl fentanyl	30	no change
Para-methoxymethamphetamine	30	no change
para-Methylfentanyl	30	no change
Parahexyl	5	no change
PB-22; QUPIC	20	no change
Pentedrone	25	no change
Pentylone	25	no change
Phenadoxone	25	no change
Phenampromide	25	no change
Phenomorphane	25	no change
Phenoperidine	25	no change
Phenyl fentanyl	30	no change
Pholcodine	5	no change
Piritramide	25	no change
Proheptazine	25	no change
Properidine	25	no change
Propiram	25	no change
Protonitazene	30	no change
Psilocybin	20,000	30,000
Psilocyn	24,000	36,000
Racemoramide	25	no change
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45	no change
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30	no change
Tetrahydrofuranyl fentanyl	15	no change
Thebacon	25	no change
Thiafentanil	25	no change
Thiofentanyl	25	no change
Thiofuranyl fentanyl	30	no change
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30	no change
Tilidine	25	no change
Trimeperidine	25	no change
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25	no change
U-47700	30	no change
Valeryl fentanyl	25	no change
Zipeprol	30	no change

Schedule II

1-Phenylcyclohexylamine	15	no change
1-Piperidinocyclohexanecarbonitrile	25	no change
4-Anilino-N-phenethyl-4-piperidine (ANPP)	937,874	no change

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
Alfentanil	5,000	no change
Alphaprodine	25	no change
Amobarbital	20,100	no change
Bezitramide	25	no change
Carfentanil	20	no change
Cocaine	60,492	no change
Codeine (for conversion)	942,452	no change
Codeine (for sale)	19,262,957	no change
d-amphetamine (for sale)	21,200,000	no change
d,l-amphetamine	21,200,000	no change
d-amphetamine (for conversion)	23,688,235	no change
Dexmethylphenidate (for sale)	6,200,000	no change
Dexmethylphenidate (for conversion)	5,374,683	no change
Dextropropoxyphene	35	no change
Dihydrocodeine	115,227	no change
Dihydroetorphine	25	no change
Diphenoxylate (for conversion)	14,100	no change
Diphenoxylate (for sale)	770,800	no change
Ecgonine	60,492	no change
Ethylmorphine	30	no change
Etorphine hydrochloride	32	no change
Fentanyl	731,360	731,341
Glutethimide	25	no change
Hydrocodone (for conversion)	1,250	no change
Hydrocodone (for sale)	27,143,545	27,121,498
Hydromorphone	1,951,801	1,951,508
Isomethadone	30	no change
L-amphetamine	30	no change
Levo-alphaacetylmethadol (LAAM)	25	no change
Levomethorphan	30	no change
Levorphanol	20,000	no change
Lisdexamfetamine	32,736,000	no change
Meperidine	681,184	no change
Meperidine Intermediate-A	30	no change
Meperidine Intermediate-B	30	no change
Meperidine Intermediate-C	30	no change
Metazocine	15	no change
Methadone (for sale)	25,619,700	no change
Methadone Intermediate	27,673,600	no change
d,l-Methamphetamine	150	no change
d-methamphetamine (for conversion)	485,020	no change
d-methamphetamine (for sale)	47,000	no change
l-methamphetamine	587,229	no change
Methylphenidate (for sale)	53,283,000	no change
Methylphenidate (for conversion)	19,975,468	no change
Metopon	25	no change
Moramide-intermediate	25	no change
Morphine (for conversion)	2,393,200	no change
Morphine (for sale)	20,805,957	no change
Nabilone	62,000	no change
Norfentanyl	25	no change
Noroxymorphone (for conversion)	22,044,741	24,756,979
Noroxymorphone (for sale)	1,000	no change
Oliceridine	25,100	no change
Opium (powder)	250,000	no change
Opium (tincture)	530,837	no change
Oripavine	33,010,750	37,721,950
Oxycodone (for conversion)	437,827	no change
Oxycodone (for sale)	53,658,226	53,584,449
Oxymorphone (for conversion)	28,204,371	31,773,105
Oxymorphone (for sale)	464,464	no change
Pentobarbital	40,000,000	no change
Phenazocine	25	no change
Phencyclidine	35	no change
Phenmetrazine	25	no change
Phenylacetone	100	no change
Piminodine	25	no change
Racemethorphan	5	no change
Racemorphan	5	no change
Remifentanyl	3,000	no change
Secobarbital	172,100	no change

Basic class	Established 2024 quotas (g)	Proposed revised 2024 quotas (g)
Sufentanil	4,000	no change
Tapentadol	10,390,226	no change
Thebaine	57,137,944	no change
List I Chemicals		
Ephedrine (for conversion)	41,100	no change
Ephedrine (for sale)	3,933,336	no change
Phenylpropanolamine (for conversion)	14,878,320	no change
Phenylpropanolamine (for sale)	7,990,000	no change
Pseudoephedrine (for conversion)	1,000	no change
Pseudoephedrine (for sale)	186,617,466	no change

The Administrator further proposes that the APQ for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero. In accordance with 21 CFR 1303.13 and 21 CFR 1315.13, upon consideration of the relevant factors, the Administrator may adjust the 2024 APQ and AAN as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will issue and publish in the **Federal Register** a final order establishing any adjustment of the 2024 APQ for each basic class of controlled substances in schedules I and II and AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.¹⁵

Signing Authority

This document of the Drug Enforcement Administration was signed on September 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–21960 Filed 9–20–24; 4:15 pm]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1413P]

Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2025

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice with request for comments.

SUMMARY: The Drug Enforcement Administration (DEA) proposes to establish the 2025 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA) and the assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Interested persons may file written comments on this notice in accordance with 21 CFR 1303.11(c) and 1315.11(d). Electronic comments must be submitted, and written comments must be postmarked, on or before October 25, 2024. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Based on comments received in response to this notice, the Administrator may hold a public hearing on one or more issues raised. In the event the Administrator decides in her sole discretion to hold such a hearing, the Administrator will publish a notice of any such hearing in the **Federal Register**. After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will publish in the

Federal Register a final order establishing the 2025 aggregate production quotas for schedule I and II controlled substances, and an assessment of annual needs for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

ADDRESSES: To ensure proper handling of comments, please reference “Docket No. DEA–1413P” on all correspondence, including any attachments. DEA encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment.

Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted, and there is no need to resubmit the same comment. Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu* of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Heather E. Achbach, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (571) 776–3882.

¹⁵ 21 CFR 1303.13(c) and 1315.13(c).

SUPPLEMENTARY INFORMATION:**Posting of Public Comments**

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration (DEA) for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

The Freedom of Information Act applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information or confidential business information identified and located as directed above will generally be made available in redacted form. If a comment contains so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at <http://www.regulations.gov> for easy reference.

Legal Authority

Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish production quotas for each basic class of controlled substances listed in schedules I and II, and for the list I chemicals ephedrine, pseudoephedrine,

and phenylpropanolamine. The Attorney General has delegated this function to the Administrator of DEA pursuant to 28 CFR 0.100.

Analysis for Proposed 2025 Aggregate Production Quotas and Assessment of Annual Needs

The proposed 2025 aggregate production quotas (APQ) and assessment of annual needs (AAN) represent those quantities of schedule I and II controlled substances, and the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, to be manufactured in the United States in 2025 to provide for the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks. These quotas include imports of ephedrine, pseudoephedrine, and phenylpropanolamine, but do not include imports of controlled substances for use in industrial processes.

Aggregate Production Quotas

In determining the proposed 2025 APQ, the Administrator has taken into account the criteria of 21 U.S.C. 826(a) and 21 CFR 1303.11, including the following seven factors:

- (1) Total net disposal of the class by all manufacturers during the current and two preceding years;
- (2) Trends in the national rate of net disposal of the class;
- (3) Total actual (or estimated) inventories of the class and of all substances manufactured from the class, and trends in inventory accumulation;
- (4) Projected demand for such class as indicated by procurement quotas requested pursuant to [21 CFR] 1303.12;
- (5) The extent of any diversion of the controlled substance in the class;
- (6) Relevant information obtained from the Department of Health and Human Services (HHS), including from the Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare and Medicaid Services (CMS), and relevant information obtained from the states; and
- (7) Other factors affecting medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the class or the substances manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and

stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires. 21 CFR 1303.11(b).

DEA formally solicited input from FDA and CDC in February of 2024 and from the states in April 2024, as required by 21 U.S.C. 826 and 21 CFR part 1303. DEA did not solicit input from CMS for reasons discussed in previous notices.¹ DEA requested information on trends in the legitimate use of select schedule I and II controlled substances from FDA and rates of overdose deaths for covered controlled substances from CDC. DEA's request for information from the states was made directly to the Prescription Drug Monitoring Program (PDMP) Administrators in each state as well as through the National Association of State Controlled Substances Authorities (NASCSA).

Assessment of Annual Needs

In similar fashion, in determining the proposed 2025 AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, the Administrator has taken into account the criteria of 21 U.S.C. 826(a) and 21 CFR 1315.11, including the following five factors:

- (1) Total net disposal of the chemical by all manufacturers and importers during the current and two preceding years;
- (2) Trends in the national rate of net disposal of each chemical;
- (3) Total actual (or estimated) inventories of the chemical and of all substances manufactured from the chemical, and trends in inventory accumulation;
- (4) Projected demand for each chemical as indicated by procurement and import quotas requested pursuant to [21 CFR] 1315.32; and
- (5) Other factors affecting medical, scientific, research, and industrial needs in the United States, lawful export requirements, and the establishment and maintenance of reserve stocks, as the Administrator finds relevant, including changes in the currently accepted medical use in treatment with the chemicals or the substances manufactured from them, the economic

¹ Proposed Adjustments to the Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2020, 85 FR 54414 (Sept. 1, 2020) and Proposed Aggregate Production Quotas for Schedule I and II Controlled Substances and Assessment of Annual Needs for List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2021, 85 FR 54407 (Sept. 1, 2020).

and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

21 CFR 1303.11(b).

In determining the proposed 2025 AAN, DEA used the calculation methodology previously described in the 2010 and 2011 assessments of annual needs (74 FR 60294 (Nov. 20, 2009) and 75 FR 79407 (Dec. 20, 2010), respectively).

Estimates of Medical Need for Schedule II Opioids and Stimulants

In accordance with 21 CFR part 1303, 21 U.S.C. 826, and 42 U.S.C. 242, HHS continues to provide DEA with estimates of the quantities of select schedule I and II controlled substances and three list I chemicals that will be required to meet the legitimate medical needs of the United States for a given calendar year. The responsibility to provide these estimates of legitimate domestic medical needs resides with FDA. FDA provides DEA with predicted estimates of domestic medical usage for selected controlled substances based on information available to them at a specific point in time in order to meet statutory requirements.

FDA predicts that levels of medical need for schedule II opioids in the United States in calendar year 2025 will decline on average 6.6 percent from calendar year 2024 levels. These declines are expected to occur across a variety of schedule II opioids including fentanyl, hydrocodone, hydromorphone, oxycodone, and oxymorphone. DEA considered the potential for diversion of schedule II opioids, as required by 21 CFR 1303.11(b)(5), as well as a potential increase in demand for certain opioids identified as being necessary to support the previously postponed elective surgeries now that the COVID-19 public health emergency (PHE) has ended, pursuant to 21 CFR 1303.11(b)(7), in developing the proposed 2025 APQ.

FDA predicted an average of a 3.5 percent increase in domestic medical use of the schedule II stimulants amphetamine, methylphenidate (including dexmethylphenidate), and lisdexamfetamine, which are prescribed to treat patients with attention deficit hyperactivity disorder (ADHD) and more recently prescribed off-label to treat patients diagnosed with long-COVID symptoms commonly known as brain fog where fatigue and cognitive impairment persist 4 to 12 weeks after

a COVID infection.² FDA also raised concerns over drug shortage notifications it received since 2022 from patients for specific ADHD medications containing amphetamine, lisdexamfetamine, and methylphenidate. FDA's stated reasons for these specific shortages include increased prescribing potentially related to the growth in telemedicine during and after the COVID-19 PHE, supply chain issues, manufacturing and quality issues, lack of active ingredients, and business decisions of manufacturers. DEA considered FDA's concerns when determining the APQ for these substances. Additionally, DEA considered manufacturer and distributor-reported data which shows inventories for both amphetamine and methylphenidate-based products have increased year-over-year throughout the supply chain. DEA believes these increases in inventories combined with the established APQs are adequate to address FDA's estimated increases in domestic medical use for amphetamine and methylphenidate. With respect to lisdexamfetamine, DEA recently increased the APQ pursuant to a final order published on September 5, 2024 to address reported shortages.³ In sum, DEA believes that manufacturers will be able to meet the increase in domestic medical need for these three schedule II stimulants with the APQs proposed in this notice.

DEA Projected Trends for Certain Schedule I Controlled Substances

DEA is proposing a higher APQ for ibogaine than DEA granted for 2024 to support manufacturing activities related to the increased level of research and clinical trials with this schedule I controlled substance. Additionally, DEA proposes a higher APQ for gamma hydroxybutyric acid (GHB) to allow for an anticipated increase in domestic bulk manufacturing to meet forecasted and continued domestic market need due to the closure of a foreign manufacturing facility. Imports of the schedule III oxybate form of GHB from that manufacturing facility have supplied an estimated 78% of the domestic need. Their foreign plant closure will be approximately one year in duration. GHB (oxybate) products are used in the treatment of patients diagnosed with narcolepsy and cataplexy.

² New Long-Haul COVID Clinics Treat Mysterious and Ongoing Symptoms, *Scientific American*, June 30, 2021; Successful Treatment of Post-COVID-19 ADHD-like Syndrome-A case Report, *J Atten Disord.*, 2023 Aug; 27(10): 1092-1098.

³ Adjustment to the Aggregate Production Quota for Lisdexamfetamine and d-Amphetamine (for Conversion) for 2024, 89 FR 72424 (Sept. 5, 2024).

Information Received for Consideration of the Remaining Factors

For the factors listed in 21 CFR 1303.11(b)(3) and (4), DEA registered manufacturers of controlled substances in schedules I and II provide information such as inventory, distribution, manufacturing, sales forecasts and quota requests to DEA database systems. See 21 CFR 1303.12, 1303.22, and part 1304.

The regulation at 21 CFR 1303.11(b)(5) requires DEA to consider the extent of diversion of controlled substances.⁴ Diversion is defined as all distribution, dispensing, or other use of controlled substances for other than legitimate medical purposes. In order to consider the extent of diversion, DEA analyzed reports of diversion of controlled substances from 2023 submitted to its Theft Loss Report database. This database is comprised of DEA registrant reports documenting diversion from the legitimate distribution chain, including employee thefts, break-ins, armed robberies, and material lost in transit. The data was categorized by basic drug class, and the amount of active pharmaceutical ingredient (API) in the dosage form was delineated with an appropriate metric for use in proposing aggregate production quota values (*i.e.*, weight).

In this proposed 2025 APQ notice, DEA continues to consider the lingering effects of the COVID-19 pandemic on the global supply chain, pursuant to 21 CFR 1303.11(b)(7), and specifically the continued impacts on the availability of raw materials for use in the domestic manufacturing process. Additionally, DEA considered the impact of the demand for surgical care for elective surgeries that were deferred during the COVID-19 PHE.

Estimates of Diversion of Covered Controlled Substances

In establishing any quota . . . , or any procurement quota established by [DEA] by regulation, for fentanyl, oxycodone, hydrocodone, oxymorphone, or hydromorphone (in this subsection referred to as a "covered controlled substance"), [DEA] shall estimate the amount of diversion of the covered controlled substance that occurs in the United States. 21 U.S.C. 826(i)(1)(A).

In estimating diversion under that provision, DEA:

(i) shall consider information . . . , in consultation with the Secretary of Health and Human Services, [it] determines reliable on rates of overdose

⁴ The estimates of diversion for five "covered controlled substances" as required by 21 U.S.C. 826(i) are discussed later in the document.

deaths and abuse and overall public health impact related to the covered controlled substance in the United States; and

(ii) may take into consideration whatever other sources of information [it] determines reliable.

21 U.S.C. 826(i)(1)(B).

The statute further mandates that DEA “make appropriate quota reductions, as determined by [DEA], from the quota [it] would have otherwise established had such diversion not been considered.”⁵

In estimating the amount of diversion of each covered controlled substance that occurs in the United States, DEA considered information from state PDMP Administrators and from legitimate distribution chain participants.

Consideration of Information From Certain State PDMPs and From National Sales Data

Pursuant to 21 CFR 1303.11(b)(6), DEA requested state PDMP data for the purpose of establishing its APQ. DEA believes state PDMPs to be an essential, reliable source of information for use in effectively estimating diversion of the five covered controlled substances. In April 2024, DEA sent a letter to NASCSA requesting its assistance in obtaining aggregated PDMP data for the five covered controlled substances from each state covering the years 2021–2023. The letter indicated that DEA was specifically interested in an analysis of prescription data from each state’s PDMP that would assist DEA in estimating diversion and setting appropriate quotas in compliance with 21 U.S.C. 826(i). In its request, DEA provided specific questions, discussed in detail below, based on common indicia of potential diversion known as “red flags” by physicians, pharmacists, manufacturers, distributors, and federal and state regulatory and law enforcement agencies.⁶ DEA investigators and administrative prosecutors also rely on Agency case law in which these red flags of diversion have been upheld as indicia of potential diversion.⁷ Certain state regulations now include red flag circumstances as potential indicators of illegitimate prescriptions, and thus of potential

abuse and diversion of controlled substances.⁸ See, e.g., The Pharmacy Place Order, 86 FR 21008, 21012 (Apr. 21, 2021) (citing 22 Tex. Admin. Code 291.29(c)(4), specifying the geographical distance between the practitioner and the patient or between the pharmacy and the patient as a red flag).

DEA requested responses from state PDMP Administrators by June 15, 2024. NASCSA disseminated DEA’s request to its PDMP Administrators and provided them with a report tool to ensure that responses to DEA’s questions were extracted consistently across all responsive states. Twenty-nine states and three territories provided DEA with summarized PDMP data as of July 2024, utilizing the standardized report developed by NASCSA.⁹ See Table 1a below.

TABLE 1a—STATES/TERRITORIES THAT RESPONDED TO DEA’S DATA REQUEST

State/territory
1. Alabama.
2. Alaska.
3. Arkansas.
4. Commonwealth of Northern Mariana Islands.
5. Connecticut.
6. Delaware.
7. District of Columbia.
8. Idaho.
9. Indiana.
10. Kansas.
11. Kentucky.
12. Louisiana.
13. Maryland.
14. Massachusetts.
15. Michigan.
16. Minnesota.
17. Mississippi.
18. Montana.
19. Nevada.
20. New Jersey.
21. New Mexico.
22. North Carolina.
23. Oklahoma.
24. Oregon.
25. Pennsylvania.
26. Puerto Rico.
27. South Carolina.
28. South Dakota.
29. Utah.
30. Vermont.
31. Virginia.
32. Washington.

Pharmacies are required by state law to enter controlled substance dispensing data into the state’s PDMP database, including the prescriber’s name,

⁸ The mere indicia of red flags alone is not proof of violation of 21 U.S.C. 824 or any other provision of the CSA. This rule discusses only their use by DEA as an analytical tool to estimate diversion.

⁹ NASCSA formatted DEA’s request into an analytics model developed by one of its associates, Appriss Inc.

registered address and DEA number; prescription information (such as drug name); dispensing date; dosage dispensed; pharmacy registered address; and patient name and address. DEA considers PDMP data to be an accurate representation of dispensing activities in states. DEA received data for the following red-flag metrics:

- The total number of patients who saw three or more prescribers in a 90-day period and were dispensed an opioid following each visit. For this metric, DEA requested and was provided the number of prescriptions for the five covered controlled substances dispensed to these patients, as a percentage of the total prescriptions dispensed for that particular covered controlled substance, as well as the corresponding quantity of the covered controlled substance dispensed. This metric (patients being prescribed covered controlled substances from three or more prescribers in a 90-day period) is used to identify potential doctor shopping, a common technique to obtain a high number of controlled substances, which may lead to abuse or diversion of controlled substances. DEA has long considered doctor shopping to be an indicator of potential diversion.¹⁰

- The number of patients that were dispensed prescriptions for each of the five covered controlled substances that exceeded 240 morphine milligram equivalents (MME) daily. States provided the raw number of such prescriptions dispensed, the number of prescriptions as a percentage of the total covered controlled substance prescriptions dispensed, and the corresponding quantity of the covered controlled substance dispensed. DEA believes that accounting for quantities in excess of 240 MME daily allows for consideration of oncology patients with legitimate medical needs for covered controlled substance prescriptions with high MME. Higher dosages place individuals at higher risk of overdose and death. Prescriptions involving dosages exceeding 240 MME daily may indicate diversion, such as illegal distribution of controlled substances or prescribing outside the usual course of professional practice.

- The number of patients that paid cash for covered controlled substance prescriptions, without submitting for insurance reimbursement.¹¹ States also provided the number of prescriptions paid entirely with cash as a percentage

¹⁰ Frank’s Corner Pharmacy, 60 FR 17574 (Apr. 6, 1995); Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195, 77 FR 62316 (Oct. 12, 2012).

¹¹ This total does not include insurance co-payments made with cash.

⁵ 21 U.S.C. 826(i)(1)(C).

⁶ National Association of Boards of Pharmacy (NABP) coalition consensus document “Stakeholders’ Challenges and Red Flag Warning Signs Related to Prescribing and Dispensing Controlled Substances” (2015). www.nabp.pharmacy/resources/reports.

⁷ The Medicine Shoppe, 79 FR 59504, 59507, 59512–13 (Oct. 2, 2014); Holiday CVS, L.L.C., d/b/a CVS Pharmacy Nos. 219 and 5195, 77 FR 62316 (Oct. 12, 2012).

of the total prescriptions for the five covered controlled substances dispensed, as well as the corresponding quantity of the covered controlled substances dispensed. When investigating potential diversion, cash payments are one element considered in identifying prescriptions filled for nonmedical purposes. Unusually high percentages of cash payments made to a prescriber or pharmacy for controlled substances may indicate diversion.¹²

DEA received PDMP data from the states in a standardized format that allowed DEA to aggregate the data. The PDMP data sample represents a population of approximately 112.35 million people, which is approximately 34 percent of the U.S. population. DEA believes this sample is sufficient to derive a reasonable nationwide estimate.

While PDMP data is useful in estimating diversion, it is not conclusive. Further investigation would be required before concluding that any of the subject prescriptions were actually diverted. DEA continues to evaluate its methodologies in estimating diversion in an effort to set quotas more efficiently. State participation is crucial to accurate data analysis, and DEA anticipates working closely with states, as well as other federal and state entities, in future quota determinations.

To calculate a national diversion estimate for each of the covered controlled substances from the responses received from state PDMP Administrators, DEA relied upon the number of individuals who received a prescription for a covered controlled substance that met any of the three red-flag metrics for each of calendar years 2021–2023. Using the population of the states responding to DEA’s request, DEA then calculated the percentage of the population issued a prescription with a red flag. Using this estimated percentage for 2021–2023, DEA analyzed trends in the data to predict the estimated percentage of patients who would be expected to be included in these red-flag metrics for 2025.

DEA also reviewed aggregate sales data for each of the covered controlled substances, which it extracted from IQVIA’s National Sales Perspective.¹³

¹² Suntree Pharmacy and Suntree Medical Equipment, LLC, 85 FR 73753 (Nov. 19, 2020) (finding that the pharmacy filled prescriptions despite the presence of multiple unresolved red flags, including cash payments); Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy, 83 FR 10876 (Mar. 13, 2018) (revoking pharmacy’s registration for filling prescriptions that raised the red flag of customers paying cash for their prescriptions, among other red flags).

¹³ DEA has purchased this data from IQVIA for decades and routinely uses this information to

IQVIA sales data was selected to help quantify diversion at the national level because it reflects the best national estimate for all prescriptions written and filled, including the total quantity available for diversion or misuse. DEA analyzed trends in IQVIA sales data from January 2021–April 2024, in order to predict the estimated national sales for 2025.

To estimate diversion for each of the covered controlled substances, DEA multiplied the forecasted percentage of patients likely to receive a prescription for a covered controlled substance that meet any of the three red-flag metrics in 2025 by the forecasted sales data from IQVIA for 2025. The resulting estimate of diversion from data submitted by state PDMP Administrators is summarized below in Table 1b. This data contributed to the final diversion estimate set forth in Table 3.

TABLE 1b—DIVERSION ESTIMATES FOR 2025 BASED ON STATE PDMP DATA FOR COVERED CONTROLLED SUBSTANCES FROM 2021–2023

Controlled substance	(g)
Fentanyl	26
Hydrocodone	90,396
Hydromorphone	699
Oxycodone	234,372
Oxymorphone	000

Consideration of Registrant Reported Diversion in the Legitimate Distribution Chain

DEA extracted data from its Theft Loss Report database and categorized it by each basic drug class. DEA calculated the estimated amount of diversion by multiplying the quantity of API in each finished dosage form by the total amount of units reported stolen or lost to estimate the metric weight in grams of the controlled substance being diverted. This estimate of diversion from the legitimate supply chain for each of the covered controlled substances is displayed in Table 2. This data contributed to the final diversion estimates set forth in Table 3.

TABLE 2—DIVERSION ESTIMATES BASED ON SUPPLY CHAIN DIVERSION DATA FOR COVERED CONTROLLED SUBSTANCES

Controlled substance	(g)
Fentanyl	73
Hydrocodone	12,528
Hydromorphone	481

administer several regulatory functions, including the administration of DEA’s quota program.

TABLE 2—DIVERSION ESTIMATES BASED ON SUPPLY CHAIN DIVERSION DATA FOR COVERED CONTROLLED SUBSTANCES—Continued

Controlled substance	(g)
Oxycodone	30,265
Oxymorphone	165

In accordance with 21 U.S.C. 826(i), DEA’s estimate of diversion for the five controlled substances was calculated by combining the values in Tables 1b and 2.

TABLE 3—TOTAL ESTIMATES OF DIVERSION FOR COVERED CONTROLLED SUBSTANCES TO BE CONSIDERED IN THE 2025 APQS

Controlled substance	(g)
Fentanyl	99
Hydrocodone	102,924
Hydromorphone	1,180
Oxycodone	264,637
Oxymorphone	165

Continuing Efforts To Anticipate and Prevent Drug Shortages

Beginning in the latter half of 2022, the DEA and FDA observed an increase in the number of drug shortages reported by manufacturers of schedule II stimulants including mixed-salt amphetamine products starting in April 2022 and lisdexamfetamine and methylphenidate starting in July 2023. As DEA and FDA stated in an open letter in 2023,¹⁴ we remain committed to doing all we can to prevent stimulant drug shortages, limit their impact, and resolve them as quickly as possible.

In particular, DEA continues to seek additional information that will assist the agency to more accurately forecast export requirements, especially for those substances controlled domestically in schedule I or II that are not controlled internationally. DEA understands that manufacturers have contractual obligations that dictate business decisions regarding the quantities of finished dosage forms they will produce under a single DEA-issued quota, which applies to products manufactured with an active ingredient, whether for domestic or foreign markets. DEA has purchased third-party data to improve its understanding of the dynamic changes in foreign markets. In February 2024, DEA began utilizing IQVIA’s foreign (non-U.S.) sales tracking

¹⁴ Both DEA and FDA released this letter on Aug. 1, 2023. It is available at: <https://www.dea.gov/sites/default/files/2023-08/DEA%20and%20FDA%20Issue%20Joint%20Letter%20to%20the%20Public.pdf>.

data module, MIDAS (Multi International Data Analysis System), which provides valuable insight into the growing export markets for schedule II stimulants. Building off the recently issued quota management rule,¹⁵ DEA also intends to add new subcategories to individual manufacturing quotas and procurement quotas, to distinguish between domestic requirements and export requirements.

As part of DEA's continuing effort to prevent shortages and be more nimble

in its administration of the quota program, DEA intends to continue to allocate procurement quotas to DEA-registered manufacturers of schedule II controlled substances on a semi-annual basis for the 2025 quota year, except that it will continue to allocate procurement quotas relating to injectable drug products containing schedule II controlled substances on an annual basis. DEA announced this change in a letter to DEA-registered manufacturers on April 29, 2024. No

further change is being implemented at this time. DEA remains committed to ensuring that all patients with legitimate medical need can access appropriately prescribed medications.

The Administrator, therefore, proposes to establish the 2025 APQ for certain schedule I and II controlled substances and AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in grams of anhydrous acid or base, as follows:

Basic class	Proposed 2025 quotas (g)
Schedule I	
-[1-(2-Thienyl)cyclohexyl]pyrrolidine	20
1-(1-Phenylcyclohexyl)pyrrolidine	30
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	10
1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201)	30
1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)	30
1-[1-(2-Thienyl)cyclohexyl]piperidine	15
2-fluoro 2-fluorofentanyl	30
1-Benzylpiperazine	25
1-Methyl-4-phenyl-4-propionoxypiperidine	10
2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)	30
2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)	30
2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)	30
2-(2,5-Dimethoxy-4-n-propylphenyl)ethanamine (2C-P)	30
2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)	100
2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)	30
2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)	30
2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)	25
2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)	30
2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)	30
2,5-Dimethoxy-4-ethylamphetamine (DOET)	25
2,5-Dimethoxy-4-n-propylthiophenethylamine	25
2,5-Dimethoxyamphetamine	25
2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)	30
2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)	30
3,4,5-Trimethoxyamphetamine	30
2-Methyl AP-237	30
3,4-Methylenedioxamphetamine (MDA)	12,000
3,4-Methylenedioxymethamphetamine (MDMA)	12,000
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	40
3,4-Methylenedioxy-N-methylcathinone (methyline)	5,200
3,4-Methylenedioxypropylvalerone (MDPV)	35
3-FMC; 3-Fluoro-N-methylcathinone	25
3-Methylfentanyl	30
3-Methylmethcathinone	30
3-Methylthiofentanyl	30
4,4'-Dimethylaminorex	30
4-Bromo-2,5-dimethoxyamphetamine (DOB)	30
4-Bromo-2,5-dimethoxyphenethylamine (2-CB)	5,100
4-Chloro-alpha-pyrrolidinovalerophenone (4-chloro-alpha-PVP)	25
4-CN-Cumyl-Butinaca	25
4-Fluoroisobutyl fentanyl	30
4F-MDMB-BINACA	30
4-FMC; Flephedrone	25
4-MEC; 4-Methyl-N-ethylcathinone	25
4-Methoxyamphetamine	150
4-methyl-1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one (alpha-PiHP)	30
4-Methyl-2,5-dimethoxyamphetamine (DOM)	25
4-Methylaminorex	25
4-Methyl-N-methylcathinone (mephedrone)	45
4-Methyl-alpha-ethylaminopentiophenone (4-MEAP)	25
4-Methyl-alpha-pyrrolidinohexiophenone (MPHP)	25

¹⁵ Management of Quotas for Controlled Substances and List I Chemicals, 88 FR 60,117 (Aug. 31, 2023) (effective Nov. 29, 2023).

Basic class	Proposed 2025 quotas (g)
4'-Methyl acetyl fentanyl	30
4-Methyl- α -pyrrolidinopropiophenone (4-MePPP)	25
4F-MDMB-BUTICA	30
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol	50
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog)	40
5F-AB-PINACA; (1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide	25
5F-ADB; 5F-MDMB-PINACA (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	25
5F-CUMYL-P7AICA; 1-(5-Fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3carboximide	25
5F-CUMYL-PINACA	25
5F-EDMB-PICA	30
5F-EDMB-PINACA	25
5F-MDMB-PICA	25
5F-AMB (methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	25
5F-APINACA; 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	25
5-Fluoro-PB-22; 5F-PB-22	25
5-Fluoro-UR144, XLR11 ([1-(5-fluoro-pentyl)-1Hindol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	25
5-Methoxy-3,4-methylenedioxyamphetamine	25
5-Methoxy-N,N-diisopropyltryptamine	25
5-Methoxy-N,N-dimethyltryptamine	11,000
AB-CHMINACA	30
AB-FUBINACA	50
AB-PINACA	30
ADB-BUTINACA	30
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	30
Acetorphine	25
Acetyl Fentanyl	100
Acetyl-alpha-methylfentanyl	30
Acetyl dihydrocodeine	30
Acetylmethadol	25
Acryl Fentanyl	25
ADB-4en-PINACA	30
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	50
AH-7921	30
All other tetrahydrocannabinol	1,166,130
Allylprodine	25
Alphacetylmethadol	25
alpha-Ethyltryptamine	25
Alphameprodine	25
Alphamethadol	25
alpha-Methylfentanyl	30
alpha-Methylthiofentanyl	30
alpha-Methyltryptamine (AMT)	25
alpha-Pyrrolidinobutiophenone (α -PBP)	25
alpha-pyrrolidinoheptaphenone (PV8)	25
alpha-pyrrolidinohexabophenone (alpha-PHP)	25
alpha-Pyrrolidinopentiophenone (α -PVP)	25
Amineptine	30
Aminorex	25
Anileridine	20
APINCA, AKB48 (N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	25
Benzethidine	25
Benzylmorphine	30
Betacetylmethadol	25
beta-Hydroxy-3-methylfentanyl	30
beta-Hydroxyfentanyl	30
beta-Hydroxythiofentanyl	30
beta-Methyl fentanyl	30
beta'-Phenyl fentanyl	30
Betameprodine	25
Betamethadol	4
Betaprodine	25
Brorphine	30
Bufotenine	15
Butonitazene	30
Butylone	25
Butyryl fentanyl	30
Cathinone	40
Clonazolam	30
Clonitazene	25
Codeine methylbromide	30
Codeine-N-oxide	192
Crotonyl Fentanyl	25

Basic class	Proposed 2025 quotas (g)
CUMYL-PEGACLONE	30
Cyclopentyl Fentanyl	30
Cyclopropyl Fentanyl	20
Cyprenorphine	25
d-9-THC	1,523,040
Desomorphine	25
Dextromoramide	25
Diapromide	20
Diclazepam	30
Diethylthiambutene	20
Diethyltryptamine	25
Difenoxin	9,300
Dihydromorphine	639,954
Dimenoxadol	25
Dimepheptanol	25
Dimethylthiambutene	20
Dimethyltryptamine	11,000
Dioxyaphetyl butyrate	25
Dipipanone	25
Drotebanol	25
Ethylmethylthiambutene	25
Ethylone	25
Etizolam	30
Etodesnitazene	30
Etonitazene	25
Etorphine	30
Etoxadine	25
Eutylone	30
Fenethylone	30
Fentanyl carbamate	30
Fentanyl related substances	600
Flualprazolam	30
Flubromazolam	30
Flunitazene	30
FUB-144	25
FUB-AKB48	25
Fub-AMB, MMB-Fubinaca, AMB-Fubinaca	25
Furanyl fentanyl	30
Furethidine	25
gamma-Hydroxybutyric acid	49,675,266
Heroin	150
Hydromorphenol	40
Hydroxypethidine	25
Ibogaine	210
Isobutyl Fentanyl	25
Isotonitazene	25
JWH-018 and AM678 (1-Pentyl-3-(1-naphthoyl)indole)	35
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	45
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	45
JWH-081 (1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole)	30
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)	30
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	35
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl)indole)	30
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl)indole)	30
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl)indole)	30
Ketobemidone	30
Levomoramide	25
Levophenyacetylmorphan	25
Lysergic acid diethylamide (LSD)	1,200
MAB-CHMINACA; ADB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	30
MDMB-CHMICA; MMB-CHMINACA(methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	30
MDMB-FUBINACA (methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	30
MMB-CHMICA-(AMB-CHMICA); Methyl-2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate	25
Marijuana	6,675,000
Marijuana extract	1,000,000
MDMB-4en-PINACA	30
MMB-FUBICA	30
Mecloqualone	30
Mescaline	1,200
Mesocarb	30
Methaqualone	60

Basic class	Proposed 2025 quotas (g)
Methcathinone	25
Methiopropamine	30
Methoxetamine	30
Methoxyacetyl fentanyl	30
Methyldesorphine	5
Methyldihydromorphine	25
Metodesnitazene	30
Metonitazene	30
Morpheridine	25
Morphine methylbromide	5
Morphine methylsulfonate	5
Morphine-N-oxide	150
MT-45	30
Myrophine	25
NM2201: Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	25
N,N-Dimethylamphetamine	25
Naphyrone	25
N-Desethyl isotonitazene	30
N-Ethyl-1-phenylcyclohexylamine	25
N-Ethyl-3-piperidyl benzilate	10
N-Ethylamphetamine	24
N-Ethylhexedrone	25
N-Ethylpentylone, ephylone	30
N-Hydroxy-3,4-methylenedioxyamphetamine	24
Nicocodeine	25
Nicomorphine	25
N-methyl-3-piperidyl benzilate	30
N-piperidinyl etonitazene	30
N-Pyrrolidino Etonitazene	30
Noracymethadol	25
Norlevorphanol	2,550
Normethadone	25
Normorphine	40
Norpipanone	25
Ocfentanil	25
ortho-Fluoroacetyl fentanyl	30
ortho-Fluorobutyl fentanyl	30
Ortho-Fluorofentanyl,2-Fluorofentanyl	30
ortho-Fluoroisobutyl fentanyl	30
ortho-Methyl acetyl fentanyl	30
ortho-Methyl methoxyacetyl fentanyl	30
Para-Chlorisobutyl fentanyl	30
Para-fluorobutyl fentanyl	25
Para-fluorofentanyl	25
para-Fluoro furanyl fentanyl	30
Para-Methoxybutyl fentanyl	30
Para-methoxymethamphetamine	30
para-Methylfentanyl	30
Parahexyl	5
PB-22; QUPIC	20
Pentadrone	25
Pentylone	25
Phenadoxone	25
Phenampromide	25
Phenomorphan	25
Phenoperidine	25
Phenyl fentanyl	30
Pholcodine	5
Piritramide	25
Proheptazine	25
Properidine	25
Propiram	25
Protonitazene	30
Psilocybin	30,000
Psilocin	36,000
Racemoramide	25
SR-18 and RCS-8 (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole)	45
SR-19 and RCS-4 (1-Pentyl-3-[(4-methoxy)-benzoyl]indole)	30
Tetrahydrofuran fentanyl	15
Thebacon	25
Thiafentanil	25
Thiofentanyl	25

Basic class	Proposed 2025 quotas (g)
Thiofuranyl fentanyl	30
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	30
Tilidine	25
Trimeperidine	25
UR-144 (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	25
U-47700	30
Valeryl fentanyl	25
Zipeprol	30

Schedule II

1-Phenylcyclohexylamine	15
1-Piperidinocyclohexanecarbonitrile	25
4-Anilino-N-phenethyl-4-piperidine (ANPP)	937,874
Alfentanil	5,000
Alphaprodine	25
Amobarbital	20,100
Bezitramide	25
Carfentanil	20
Cocaine	60,492
Codeine (for conversion)	942,452
Codeine (for sale)	19,262,957
d-amphetamine (for sale)	21,200,000
d,l-amphetamine	21,200,000
d-amphetamine (for conversion)	23,688,235
Dexmethylphenidate (for sale)	6,200,000
Dexmethylphenidate (for conversion)	5,374,683
Dextropropoxyphene	35
Dihydrocodeine	115,227
Dihydroetorphine	25
Diphenoxylate (for conversion)	14,100
Diphenoxylate (for sale)	770,800
Ecgonine	60,492
Ethylmorphine	30
Etorphine hydrochloride	32
Fentanyl	731,341
Glutethimide	25
Hydrocodone (for conversion)	1,250
Hydrocodone (for sale)	27,121,498
Hydromorphone	1,951,508
Isomethadone	30
L-amphetamine	30
Levo-alphaacetylmethadol (LAAM)	25
Levomethorphan	30
Levorphanol	20,000
Lisdexamfetamine	32,736,000
Meperidine	681,184
Meperidine Intermediate-A	30
Meperidine Intermediate-B	30
Meperidine Intermediate-C	30
Metazocine	15
Methadone (for sale)	25,619,700
Methadone Intermediate	27,673,600
d,l-Methamphetamine	150
d-methamphetamine (for conversion)	485,020
d-methamphetamine (for sale)	47,000
l-methamphetamine	587,229
Methylphenidate (for sale)	53,283,000
Methylphenidate (for conversion)	19,975,468
Metopon	25
Moramide-intermediate	25
Morphine (for conversion)	2,393,200
Morphine (for sale)	20,805,957
Nabilone	62,000
Norfentanyl	25
Noroxymorphone (for conversion)	24,756,979
Noroxymorphone (for sale)	1,000
Oliceridine	25,100
Opium (powder)	250,000
Opium (tincture)	530,837
Oripavine	37,721,950
Oxycodone (for conversion)	437,827

Basic class	Proposed 2025 quotas (g)
Oxycodone (for sale)	53,584,449
Oxymorphone (for conversion)	31,773,105
Oxymorphone (for sale)	464,464
Pentobarbital	40,000,000
Phenazocine	25
Phencyclidine	35
Phenmetrazine	25
Phenylacetone	100
Piminodine	25
Racemethorphan	5
Racemorphan	5
Remifentanyl	3,000
Secobarbital	172,100
Sufentanyl	4,000
Tapentadol	10,390,226
Thebaine	57,137,944
List I Chemicals	
Ephedrine (for conversion)	41,100
Ephedrine (for sale)	3,933,336
Phenylpropanolamine (for conversion)	14,878,320
Phenylpropanolamine (for sale)	7,990,000
Pseudoephedrine (for conversion)	1,000
Pseudoephedrine (for sale)	186,617,466

The Administrator further proposes that the APQ for all other schedule I and II controlled substances included in 21 CFR 1308.11 and 1308.12 remain at zero.

These proposed 2025 quotas reflect the quantities that DEA believes are necessary to meet the estimated medical, scientific, research, and industrial needs of the United States, lawful export requirements; and the establishment and maintenance of reserve stocks.

In accordance with 21 CFR 1303.13 and 1315.13, upon consideration of the relevant factors, the Administrator may adjust the 2025 APQ and AAN as needed.

Conclusion

After consideration of any comments or objections, or after a hearing, if one is held, the Administrator will issue and publish in the **Federal Register** a final order establishing the 2025 APQ for controlled substances in schedules I and II and establishing an AAN for the list I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, as directed by 21 CFR 1303.11(c) and 1315.11(f).

Signing Authority

This document of the Drug Enforcement Administration was signed on September 20, 2024, by Administrator Anne Milgram. That

document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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