

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91555; File No. 4-698]

**Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail by BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc. and Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MEMX, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC; and New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.**

April 14, 2021.

### I. Introduction

On March 31, 2021, the Operating Committee for Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”):<sup>1</sup> BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX, LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the “Participants,” “self-regulatory organizations,” or “SROs”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>2</sup> and Rule 608

<sup>1</sup> The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

<sup>2</sup> 15 U.S.C 78k-1(a)(3).

thereunder,<sup>3</sup> a proposed amendment to the CAT NMS Plan to implement a revised funding model (“Proposed Funding Model”) for the consolidated audit trail (“CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Proposed Funding Model.<sup>4</sup> *Exhibit A*, attached hereto, contains proposed revisions to Articles I and XI of the CAT NMS Plan as well as proposed Appendix B to the Plan containing the fee schedule setting forth the CAT fees to be paid by the Participants. In addition, the Operating Committee provided an example of how the Proposed Funding Model would operate for illustrative purposes only, as attached hereto as *Exhibit B*. The example is provided in three charts setting forth illustrative CAT fees for each Participant and Industry Member CAT Reporter. The Commission is publishing this notice to solicit comments from interested persons on the amendment.<sup>5</sup>

### II. Description of the Plan

Set forth in this Section II is the statement of the purpose and summary of the amendment, along with information required by Rule 608(a) under the Exchange Act,<sup>6</sup> substantially as prepared and submitted by the Participants to the Commission.<sup>7</sup>

#### A. Description of the Amendments to the CAT NMS Plan

The Operating Committee proposes to revise certain aspects of the funding model set forth in Article XI of the CAT NMS Plan (the “Original Funding Model”). The Original Funding Model requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Industry Members (other than alternative trading systems (“ATs”) that execute transactions in Eligible Securities (“Execution Venue ATs”)) through fixed tiered fees based on message traffic for Eligible Securities, and (2) Participants and Industry Members that are Execution Venue ATs for Eligible Securities through fixed tiered fees based on market share. The Operating Committee proposes to amend the CAT NMS Plan to adopt the Proposed Funding Model. The Proposed Funding Model would continue to

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated March 31, 2021 (“Transmittal Letter”).

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> See 17 CFR 242.608(a).

<sup>7</sup> See Transmittal Letter, *supra* note 4. Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

require many of the same elements as the Original Funding Model, including the bifurcated funding approach, and the use of market share and message traffic for allocating costs. The Proposed Funding Model, however, would revise the Original Funding Model in certain ways, including (1) dividing the CAT costs between Participants and Industry Members, rather than between Execution Venues and Industry Members (other than Execution Venue ATs); (2) eliminating the use of tiers in calculating CAT fees for Participants and Industry Members; (3) adopting certain minimum and maximum CAT fees for Industry Members and Participants; and (4) imposing certain discounts for market making activity when calculating Industry Member CAT fees. The Operating Committee also proposes to adopt a fee schedule to establish the CAT fees applicable to Participants based on the Proposed Funding Model. The fee schedule would establish the allocation percentages and other variables for calculating the CAT fees under the Proposed Funding Model.

#### 1. Executive Summary of the Proposed Funding Model

Under the Proposed Funding Model, the CAT fees for the relevant period would be designed to cover the total CAT costs associated with developing, implementing and operating the CAT for the relevant period (“Total CAT Costs”).<sup>8</sup> The Proposed Funding Model would implement a bifurcated funding model, where these costs would be borne by both Participants and Industry Members. Industry Members as a group would pay 75% of the Total CAT Costs (the “Industry Member Allocation”), and Participants as a group would pay 25% of the Total CAT Costs (the “Participant Allocation”).<sup>9</sup>

The Industry Member Allocation would be allocated to each Industry Member based on message traffic. This is similar to the Original Funding Model, which allocated the Industry Member Allocation among Industry Members (other than Execution Venue ATs) based on message traffic. The Proposed Funding Model would differ from the Original Funding Model because it would eliminate tiering, and it would include certain market maker discounts and a minimum and

<sup>8</sup> Note that certain costs would be excluded from the Historical CAT Assessment Costs, as discussed in more detail below.

<sup>9</sup> Each Industry Member and Participant CAT Reporter would be required to pay CAT fees as established via the Proposed Funding Model. CAT Reporting Agents acting in their role as such would not have an obligation to pay CAT fees.

maximum CAT fee for Industry Members. Under the Proposed Funding Model, each Industry Member would pay a CAT fee that is calculated by multiplying each Industry Member's percentage of the total message traffic of all Industry Members each quarter by the Industry Member Allocation, subject to certain market making discounts, a minimum fee and a maximum fee. Each Industry Member that is an Options Market Maker<sup>10</sup> would have a discount based on the options trade-to-quote ratio applied to its options market making message traffic when calculating that Industry Member's message traffic to prevent a potentially disproportionate effect on options market making due to such message traffic. Similarly, to prevent a potentially disproportionate effect on market making in NMS Stocks, each Industry Member that is an equity market maker in NMS Stocks ("Equity Market Maker") would have a discount based on the NMS Stock trade-to-quote ratio applied to its market making message traffic in NMS Stocks when calculating that Industry Member's message traffic.<sup>11</sup> In addition, each Industry Member CAT Reporter would pay a minimum CAT fee ("Minimum Industry Member CAT Fee") of \$125 per quarter if its CAT fee would be less than \$125 per quarter when calculated based on message traffic. Furthermore, an Industry Member's CAT fee would be subject to a maximum fee ("Maximum Industry Member CAT Fee"). The Maximum Industry Member CAT Fee would be the fee calculated based on 8% of the total message traffic for all Industry Members. If an Industry Member's fee is limited to the Maximum Industry Member CAT Fee, any excess amount which the Industry Member would have paid as a fee above such Maximum Industry Member CAT Fee will be re-allocated among all Industry Members (including any Industry Members subject to the Maximum

Industry Member CAT Fee and any Industry Members subject to the Minimum Industry Member CAT Fee) in accordance with each Industry Member's percentage of total message traffic.

As for the Participant Allocation, each Participant would pay a minimum CAT fee of 0.75% of the Participant Allocation (the "Minimum Participant Fee"). The Participant Allocation minus the total Minimum Participant Fees required to be paid by all Participants (the "Adjusted Participant Allocation") would be divided between Participants that execute transactions in, or in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in Eligible Securities that are NMS Stocks ("Equities Participants") and Participants that execute transactions in Listed Options ("Options Participants"). Equities Participants as a group would pay 60% of the Adjusted Participant Allocation ("Equities Participant Allocation") and Options Participants as a group would pay 40% of the Adjusted Participant Allocation ("Options Participant Allocation").<sup>12</sup>

The Equities Participant Allocation would be divided among Equities Participants based on each Equities Participant's market share in NMS Stocks. Each Equities Participant would pay a CAT fee that is calculated by multiplying its percentage of the total market share of NMS Stock for all Equities Participants during the relevant time period by the Equities Participant Allocation, subject to a maximum Equities Participant fee. Total market share in NMS Stocks would be determined by calculating the total volume in NMS Stocks reported by all Equities Participants during the relevant time period. A national securities association (currently, only FINRA)

would pay its respective share of the Equities Participant Allocation calculated based on market share, provided that the national securities association would not pay more than a maximum Equities Participant fee, which would be the greater of (x) 20% of the Equities Participant Allocation or (y) the highest CAT fee required to be paid by any other Equities Participant plus 5% of such highest CAT fee ("Maximum Equities Participant Fee"), plus any additional fee required by the re-allocation of any excess amount which such Participant otherwise would have paid if not subject to the Maximum Equities Participant Fee. Specifically, if any Participant's fee is limited to the Maximum Equities Participant Fee, any excess amount which such Participant otherwise would have paid as a fee above such Maximum Equities Participant Fee will be re-allocated among all Equities Participants (including any Equities Participant subject to the Maximum Equities Participant Fee) in accordance with their market share.

The Options Participant Allocation would be divided among Options Participants based on each Options Participant's market share in Listed Options. Each Options Participant would pay a CAT fee that is calculated by multiplying its percentage of the total market share in Listed Options during the relevant time period by the Options Participant Allocation. Total market share in Listed Options would be determined by calculating the total volume of Listed Options contracts reported by all Options Participants during the relevant time period.

The following chart summarizes certain similarities and differences between the Original Funding Model<sup>13</sup> (as well as certain aspects that were proposed in the Prior Fee Proposal<sup>14</sup>) and the Proposed Funding Model:

Original funding model (as proposed in prior fee proposal)	Proposed funding model
Bifurcated Cost Allocation: 75% Industry Member Allocation ..... 25% Execution Venue Allocation ..... Execution Venues include Participants and Execution Venue ATSS	75% Industry Member Allocation. 25% Participant Allocation. All ATSS would be included as Industry Members.

<sup>10</sup> Section 1.1 of the CAT NMS Plan defines an "Options Market Maker" as "a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange."

<sup>11</sup> The proposed market making discounts are consistent with a prior CAT fee proposal filed with the SEC ("Prior Fee Proposal"). For a description of the Prior Fee Proposal, see Securities Exchange Act Rel. No. 82451 (Jan. 5, 2018), 83 FR 1399 (Jan.

11, 2018) ("Prior Fee Proposal Release"). The Participants later withdrew this proposed amendment. Securities Exchange Act Rel. No. 82892 (Mar. 16, 2018), 83 FR 12633 (Mar. 22, 2018) ("Withdrawal Release").

<sup>12</sup> For the avoidance of doubt, the Equities Participant Allocation would be divided among Equities Participants based only on each Participant's market share in NMS Stocks. Unlike the Original Funding Model, the allocation of the

Equities Participant Allocation among Equities Participants under the Proposed Funding Model will not take into consideration market share associated with OTC Equity Securities for which FINRA facilitates trade reporting.

<sup>13</sup> The Original Funding Model is set forth in the CAT NMS Plan, which was approved in 2016. See CAT NMS Plan Approval Order at 84793-84798.

<sup>14</sup> See generally Prior Fee Proposal Release.

Original funding model (as proposed in prior fee proposal)	Proposed funding model
<p>Note that the bifurcated model to allocate costs among Industry Members (other than Execution Venue ATs) and Execution Venues is part of the Original Funding Model; the 75%–25% allocation had been proposed in the Prior Fee Proposal.</p> <p>75% Industry Member Allocation:  <i>Message Traffic Approach with Tiering:</i>                      Count each Industry Member’s messages so the Industry Member can be assigned to a tier and allocated a proportionate share of cost for that tier.                      Note that the discounts for market making had been proposed in the Prior Fee Proposal.</p> <p>25% Participant Allocation:  <i>Market Share Approach with Tiering:</i>                      No Minimum Participant Fee.</p> <p><i>Market Group Split:</i></p> <ul style="list-style-type: none"> <li>• 67% of costs allocated to NMS Stock and OTC Equities Execution Venues.</li> <li>• 33% of costs allocated to Listed Options Execution Venues.</li> </ul> <p>Note that the split between NMS Stock and OTC Equities Execution Venues and Listed Options Execution Venues is part of the Original Funding Model; the 67%–33% allocation had been proposed in the Prior Fee Proposal.</p> <p><i>Market Share-Based Tier Allocation:</i></p> <ul style="list-style-type: none"> <li>• Within NMS Stock and OTC Equities market group, determine each Execution Venue’s market share so the Execution Venue can be assigned to a tier and allocated a proportionate share of cost for that tier.</li> <li>• Within Listed Options market group, determine each Execution Venue’s market share so the Execution Venue can be assigned to a tier and allocated a proportionate share of cost for that tier.</li> </ul>	<p><i>Message Traffic Approach:</i>                      Count each Industry Member’s messages so the Industry Member can be allocated a proportionate share of cost compared to total Industry Member messages, subject to certain discounts for market making, a minimum fee, and a maximum fee.</p> <p><i>Market Share Approach:</i>  <i>Minimum Participant Fee:</i> 0.75% of the Participant Allocation allocated to each Participant.  <i>Market Group Split:</i></p> <ul style="list-style-type: none"> <li>• 60% of costs allocated to NMS Stock Participants.</li> <li>• 40% of costs allocated Listed Options Participants.</li> </ul> <p>Note OTC Equity Security market share would not be considered.</p> <p><i>Market Share-Based Allocation:</i></p> <ul style="list-style-type: none"> <li>• Within NMS Stock market group, determine each Participant’s market share, subject to a FINRA-related cap allocation/reallocation, so the Participant can be allocated a proportionate share of cost.</li> <li>• Within Listed Options market group, determine each Participant’s market share so it can be allocated a proportionate share of cost.</li> </ul>

As discussed in detail below, the Operating Committee believes that the Proposed Funding Model satisfies the applicable requirements of the Exchange Act as well as the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein. For example, the Operating Committee believes that the Proposed Funding Model provides for the “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities necessary or appropriate in furtherance of the purposes of this chapter.”<sup>15</sup> The Operating Committee also believes that the Proposed Funding Model is “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.”<sup>16</sup> Furthermore, the Operating Committee believes that the Proposed Funding Model does “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”<sup>17</sup> Accordingly, the Operating Committee

believes that the Proposed Funding Model satisfies the requirements of the Exchange Act. The Participants also believe that the Proposed Funding Model satisfies the funding principles set forth in Section 11.2 of the CAT NMS Plan, as proposed to be modified herein, as well as the requirements in Section 11.1(c) of the CAT NMS Plan. The Operating Committee therefore believes that the Commission should approve the Proposed Funding Model as it “is necessary or 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 mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.”<sup>18</sup>

2. Allocation of CAT Costs Between Industry Members and Participants  
 a. CAT Fees for Both Industry Members and Participants

Under the Proposed Funding Model, both Participants and Industry Members would contribute to the funding of the CAT by paying a CAT fee. As permitted by Rule 613, the CAT NMS Plan

requires Industry Members to pay a CAT fee. Nevertheless, the Participants have paid the full cost of the creation, implementation and maintenance of the CAT since 2012, pending Commission approval of a fee program. The continued funding of the CAT solely by the Participants was and is not contemplated by the CAT NMS Plan, nor is it a financially sustainable approach.

Rule 613(a)(1)(vii)(D) contemplates Industry Members contributing to the payment of CAT costs. Specifically, this provision requires the CAT NMS Plan to address “[h]ow the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors.”

In addition, as approved by the SEC, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) states that “the Operating Committee shall have discretion to establish funding for the Company,<sup>19</sup> including: (i) Establishing

<sup>15</sup> Sections 6(b)(4) and 15A(b)(5) of the Exchange Act.

<sup>16</sup> Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

<sup>17</sup> Sections 6(b)(8) and 15A(b)(9) of the Exchange Act.

<sup>18</sup> Rule 608(b)(2) of Regulation NMS under the Exchange Act.

<sup>19</sup> As defined in the CAT NMS Plan, the Company is the Consolidated Audit Trail, LLC.

fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by the Participants.”<sup>20</sup> The Commission stated in approving the CAT NMS Plan the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants’ funding authority to recover the Participants’ costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and, as noted above, the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants’ self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.<sup>21</sup>

In its recent amendments to the CAT NMS Plan, the SEC reaffirmed the ability for the Participants to charge Industry Members a CAT fee. Specifically, the SEC noted that the amendments were not intended to change the basic funding structure for the CAT, which may include fees established by the Operating Committee, and implemented by the Participants, to recover from Industry Members the costs and expenses incurred by the Participants in connection with the development and implementation of the CAT.<sup>22</sup>

Finally, as noted by the SEC, the CAT “substantially enhance[s] the ability of the SROs and the Commission to oversee today’s securities markets,”<sup>23</sup> thereby benefitting all market participants. As such, both Participants and Industry Members should contribute to covering the cost of the CAT.

#### b. Categorization of Alternative Trading Systems

The Original Funding Model employs a bifurcated approach in which costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venue ATSS for Eligible Securities, and (2) Industry Members (other than Execution Venue ATSS).

Under the Proposed Funding Model, the concept of an Execution Venue would be eliminated, and CAT costs would be divided between Participants as a group and Industry Members as a group; Execution Venue ATSS would be treated like other Industry Members, not Participants. Accordingly, the Operating Committee proposes to delete the definition of the term “Execution Venue” and related provisions from the CAT NMS Plan.

The Operating Committee believes that this change would address prior comments regarding the inclusion of ATSS in the Execution Venue category with Participants. First, this proposed change would simplify the model by requiring all Industry Members to pay a fee based on message traffic, rather than treating certain Industry Members—Execution Venue ATSS—in the same manner as Participants, which would pay a fee based on market share. Second, this proposed change would address comments that treating Execution Venue ATSS like Participants would act as a barrier to entry for smaller ATSS.<sup>24</sup> Whether or not such a potential would exist, under the Proposed Funding Model, smaller ATSS would be treated like any other smaller Industry Member when calculating their CAT fee, thereby rendering comments regarding potential barriers to entry for smaller ATSS moot.

Section 1.1 of the CAT NMS Plan defines the term “Execution Venue” to mean “a Participant or an alternative trading system (‘ATS’) (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).” The Operating Committee proposes to delete this term and its definition from Section 1.1 of the CAT NMS Plan as the concept will no longer be necessary for the Proposed Funding Model.

The Operating Committee also proposes to amend Section 11.2(c)(i) and (ii) of the CAT NMS Plan to reflect the new approach of the Proposed Funding Model. Section 11.2(c)(i) of the CAT NMS Plan states that the fees charged to “CAT Reporters that are Execution Venues, including ATSS, are based upon the level of market share.” Under the Proposed Funding Model, fees charged to Participants only would be based on market share; fees charged to all Industry Members, including ATSS, will be based on message traffic. Accordingly, the Operating Committee proposes to replace the phrase “CAT

Reporters that are Execution Venues, including ATSS” with the term “Participants.”

Section 11.2(c)(ii) of the CAT NMS Plan states that the fees charged to “Industry Members’ non-ATS activities are based upon message traffic.” Under the Proposed Funding Model, both the ATS and non-ATS activity of Industry Members will be used as the basis for the fees charged to Industry Members. Accordingly, the Operating Committee proposes to delete the phrase “non-ATS activities” from Section 11.2(c)(ii) of the CAT NMS Plan.

Section 11.3(a) describes the CAT fees to be paid by Execution Venues. Because these fees would be limited to Participants, not to Execution Venues more broadly, the Operating Committee proposes to replace the references to “Execution Venues” with “Participants” in Section 11.3(a) of the CAT NMS Plan. The Operating Committee proposes to replace the reference to “Execution Venues” with “Participants” in Section 11.3(a) of the CAT NMS Plan, which currently states that “[t]he Operating Committee will establish fixed fees to be payable by Execution Venues as provided in this Section 11.3(a).”

The Operating Committee also proposes to replace the references to “Execution Venue” with “Participants” in Section 11.3(a)(i) of the CAT NMS Plan,<sup>25</sup> which currently states:

(i) Each Execution Venue that: (A) Executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national

<sup>20</sup> See also Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

<sup>21</sup> CAT NMS Plan Approval Order at 84794.

<sup>22</sup> Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31329 (May 22, 2020) (“Financial Accountability Milestone Release”).

<sup>23</sup> Securities Exchange Act Rel. No. 67457 (Jul. 18, 2012), 77 FR 45722, 45726 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

<sup>24</sup> See, e.g., Securities Exchange Act Rel. No. 81067 (June 30, 2017), 82 FR 31656, 31664 (July 7, 2017) (“Suspension Order”).

<sup>25</sup> Note that, as discussed below, references to tiers and OTC Equity Securities in this provision will be deleted as well.

securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In addition, the Operating Committee proposes to delete the final clause in Section 11.3(a)(i), which states "provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of the such national security association's market share." This proviso was included to clarify how the share volume of an Execution Venue ATS was treated in the context of calculating a national security association's market share when Execution Venue ATSs and Participants were in the same fee category. As Execution Venue ATSs would be treated as Industry Members under the Proposed Funding Model, the Operating Committee proposes to delete this proviso from Section 11.3(a)(i) of the CAT NMS Plan.

Similarly, Section 11.3(a)(ii) of the CAT NMS Plan states that "[e]ach Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue." The Operating Committee proposes to replace both references to "Execution Venue" with "Participant."

Section 11.3(b) of the CAT NMS Plan provides guidance as to how the message traffic for certain ATS activity would be included in the Industry Member message traffic calculations. Specifically, Section 11.3(b) of the CAT NMS Plan, in part, states, the following:

For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.

Under the Original Funding Model, Execution Venue ATSs were treated as Execution Venues, but other ATSs were treated as Industry Members. Accordingly, this statement clarified how message traffic would be counted for ATSs that were not Execution Venue ATSs and for routing to and from ATSs. Under the Proposed Funding Model, however, all ATS activity would be treated as Industry Member activity for purposes of calculating the Industry Member CAT fees. Therefore, because this clarifying statement is unnecessary under the Proposed Funding Model, the Operating Committee proposes to delete

this sentence from Section 11.3(b) of the CAT NMS Plan.

#### c. 75%–25% Allocation Between Industry Members and Participants

As discussed above, the CAT NMS Plan as approved by the Commission provides the Operating Committee with discretion to establish CAT fees to be paid by Participants and Industry Members. The Proposed Funding Model contemplates allocating CAT costs between Participants and Industry Members to permit the calculation of CAT fees based on market share for Participants and based on message traffic for Industry Members.<sup>26</sup> The Operating Committee proposes to implement this allocation through a 75%–25% allocation between Industry Members and Participants. Specifically, in calculating CAT fees for the relevant period under the Proposed Funding Model, Industry Members as a group would pay 75% of the Total CAT Costs for the relevant period ("Industry Member Allocation"), and Participants as a group would pay 25% of the Total CAT Costs for the relevant period ("Participant Allocation").

In proposing a 75%–25% allocation between Industry Members and Participants, Participants considered a variety of different potential allocations between Industry Members and Participants. After analyzing the various alternatives, the Participants determined that the 75%–25% allocation continues to be an equitable allocation of reasonable CAT fees between Industry Members and Participants that balances the costs paid by each CAT Reporter and the regulatory benefits each receives.

The Operating Committee notes that the 75%–25% allocation would have the effect of increasing the cost allocation to Participants by approximately 8% of the total CAT costs in comparison to the Prior Fee Proposal.<sup>27</sup> The Prior Fee Proposal also relied upon a 75%–25% allocation between CAT Reporters, but the allocation was structured differently than in the Proposed Funding Model. In the Prior Fee Proposal, Industry Members (other than Execution Venue ATSs) would have paid 75% of the total CAT costs, and Participants and Execution Venue ATSs would have paid

25% of the total CAT costs.<sup>28</sup> Most ATSs were included in the 25% allocation for Execution Venues. ATSs accounted for approximately 8% of the total CAT costs in the Prior Fee Proposal, and approximately 32% of the Execution Venue allocation. By moving ATSs to the Industry Member Allocation, Participants would pay the full 25% of the total CAT costs allocated to Participants rather than approximately 68% of the 25% of Total CAT costs allocated to Execution Venues under the Prior Fee Proposal. Using total CAT cost data for 2020, 8% of total CAT costs would be approximately \$6.8 million for 2020. The Operating Committee believes that this substantial increase in the Participant share of the total CAT costs addresses comments suggesting that Execution Venue ATSs should be treated like other Industry Members (rather than as Execution Venues) and indicating that the size of the percentage of total CAT costs to be paid by Industry Members as a group was too large.<sup>29</sup> Correspondingly, the 75% Industry Member Allocation would be shared among more Industry Members under the Proposed Funding Model as all ATSs will be Industry Members for purposes of CAT fees, not just ATSs other than Execution Venue ATSs.

The Operating Committee also considered alternatives to the Participant contribution besides the proposed 25% in which Participants paid larger contributions than 25% of the total CAT costs (e.g., a 50%–50% allocation between Industry Members and Participants) and Participants paid smaller contributions than 25% of the total CAT costs.<sup>30</sup> In considering these alternative allocations with percentages greater than 25% of total CAT costs allocated to Participants, the Participants noted that there are far more Industry Members than Participants. There are only 25 Participants and approximately 1237 Industry Members, as of December 2020. Moreover, based upon an analysis of available CAT Reporter revenue, Participants only represented

<sup>28</sup> Prior Fee Proposal Release at 1408.

<sup>29</sup> See Suspension Order at 31662–3.

<sup>30</sup> In the development of the Prior Fee Proposal and the Proposed Funding Model, the Participants explored a variety of other possible allocations. For example, in determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues for the Prior Fee Proposal, the Participants analyzed a range of possible splits for revenue recovery from such Industry Members and Execution Venues, including 80%–20%, 75%–25%, 70%–30% and 65%–35% allocations between Industry Members and Execution Venues. See, e.g., Prior Fee Proposal Release at 1408.

<sup>26</sup> See, e.g., Sections 11.2(b)–(c) and 11.3(a)–(b) of the CAT NMS Plan. In the Original Funding Model, costs were allocated between Execution Venues and certain Industry Members, whereas the Proposed Funding Model proposes to allocate costs between Participants and Industry Members.

<sup>27</sup> For a description of the Prior Fee Proposal, see generally Prior Fee Proposal Release. The Participants later withdrew this amendment. See Withdrawal Release.

approximately 4% of the total CAT Reporter revenue; Industry Members represented 96% of the total CAT Reporter revenue.<sup>31</sup> In addition, various Industry Members have revenue in excess of some or all of the Participants. Accordingly, the Operating Committee determined that allocating more than 25% of the total CAT costs to the Participants was not a fair and equitable approach. Furthermore, with this allocation, the Industry Members with the most message traffic and the Participant complexes with the most market share would pay comparable CAT fees. For example, based on the data from the fourth quarter of 2020, the three Industry Members with the most message traffic would be subject to an annual CAT fee in the range of \$5 to \$6 million, and the Participant complexes with the highest CAT fees would pay an annual CAT fee in a similar range.

The Operating Committee also analyzed the possibility of allocating CAT costs among CAT Reporters—both Participants and Industry Members—based on revenue. Such a revenue-based allocation would impose a more significant portion of the CAT costs on Industry Members. Industry Members would pay approximately 96% of the CAT costs and Participants would pay approximately 4% of the CAT costs. Because the revenue-based allocation would impose such a significant percentage of CAT costs on Industry Members, the Operating Committee determined not to pursue that approach. The Operating Committee also recognized the practical difficulties with determining the appropriate revenue figures for all CAT Reporters.

The Industry Member Allocation of 75% of Total CAT Costs and the Participant Allocation of 25% of Total CAT Costs would be included in the fee schedule for the Consolidated Audit Trail Funding Fees in the CAT NMS Plan. Because the Participant CAT fees would be charged on a quarterly basis, this provision would indicate that the Industry Member Allocation and the Participant Allocation would be calculated based on 1/4th of the Total CAT Costs for the relevant year. Specifically, proposed paragraph (b)(1) of Appendix B of the CAT NMS Plan would state that “The Industry Member Allocation for each quarter shall be 75%

<sup>31</sup> Industry Member revenue was calculated based on the total revenue reported in the Industry Member’s FOCUS reports. Participant revenue was calculated based on revenue information provided in Form 1 amendments and/or publicly reported figures. Participants are not required to file uniform FOCUS-type reports regarding revenue like Industry Members. Accordingly, the revenue calculation for Participants is not as straightforward as for Industry Members.

of 1/4th of the Total CAT Costs for the relevant year. The Participant Allocation for each quarter shall be 25% of 1/4th of the Total CAT Costs for the relevant year.”

### 3. Industry Member CAT Fee

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

#### a. Use of Message Traffic

Consistent with the Original Funding Model, the Industry Member Allocation would be allocated among Industry Members based on message traffic. The CAT NMS Plan, as approved by the SEC, contemplates the use of message traffic to apportion the Industry Member

Allocation among Industry Members.<sup>32</sup> Although the Operating Committee analyzed various alternative methods for allocating costs among Industry Members, the Operating Committee continued to conclude that using message traffic would equitably allocate CAT fees among Industry Members. This approach is consistent with the approach set forth in Section 11.3(b) of the CAT NMS Plan, which states that “[t]he Operating Committee will establish fixed fees to be payable by Industry Members, based on the message traffic generated by such Industry Member.”<sup>33</sup> Accordingly, the use of message traffic for allocating CAT costs among Industry Members is consistent with the CAT NMS Plan as approved by the Commission.

The Operating Committee also analyzed the possibility of allocating the Industry Member Allocation among Industry Members based on revenue related to activities in Eligible Securities, which would have been derived from Industry Member revenue reported on FOCUS reports.<sup>34</sup> The Operating Committee concluded that it may be difficult to determine which types of Industry Member revenue should be included in the calculation for a CAT fee under such an approach.

#### b. Calculating Industry Member CAT Fees

##### i. No Tiered Fees for Industry Members

While continuing to utilize a message traffic-based model for Industry Members, the Operating Committee proposes to eliminate the use of tiered fees for Industry Members in the Proposed Funding Model. Instead, under the Proposed Funding Model, each Industry Member would pay a fee based solely on its percentage of total Industry Member message traffic (subject to the market maker message traffic discounts, the Minimum Industry Member CAT Fee and the Maximum Industry Member CAT Fee).<sup>35</sup> The Operating Committee therefore proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) to eliminate the

<sup>32</sup> See, e.g., Sections 11.2(c) and 11.3(b) of the CAT NMS Plan.

<sup>33</sup> See also Section 11.2(c) of the CAT NMS Plan.

<sup>34</sup> This approach would have been similar to FINRA’s imposition of the Gross Income Assessment, which is based on FOCUS report revenue. See Section 1(c) and (d) of Schedule A of FINRA By-Laws.

<sup>35</sup> Similarly, as discussed further below, the Operating Committee proposes to allocate the Participant Allocation among Participants based on the Participant’s market share, consistent with the Original Funding Model, except it too would be calculated without relying on tiered fees.

concept of tiered fees from the CAT NMS Plan.

(a) Advantages of No Tiered Fees

By removing the concept of fee tiering for both Industry Members and Participant Allocations, the Proposed Funding Model addresses various comments regarding the use of tiering.<sup>36</sup>

Utilizing a tiered fee structure, by its nature, would create certain inequities among the CAT fees paid by Industry Members. For example, two Industry Members with similar levels of message traffic may pay notably different fees if one falls in a higher tier and the other falls within a lower tier.

Correspondingly, a tiered fee structure generally reduces fees for Industry Members with higher message traffic in one tier, while increasing fees for Industry Members with lower levels of message traffic in the same tier, as compared to a non-tiered fee.

Furthermore, Industry Members in lower tiers potentially pay more than they would without the use of tiers. While tiering exists in various other fee programs and generally itself may not be an unfairly discriminatory practice, in response to feedback on the Prior Fee Proposal, the Participants are proposing to eliminate the tiering concept, rendering past comments about potential inequities that may exist using a tiering model moot.

By charging each Industry Member a CAT fee directly based on its own message traffic, rather than charging a tiered fee, the Proposed Funding Model will result in an Industry Member's CAT fee being tied more directly to the Industry Member's message traffic in the CAT. In contrast, with a tiered fee, Industry Members with different levels of message traffic that are placed in the same tier would all pay the same CAT fee, thereby limiting the correlation between an Industry Member's message traffic in the CAT and its CAT fee.

The proposed non-tiering approach is, arguably, more simplistic and objective to administer than the tiering approach. With a tiering approach, the number of tiers for Industry Members, the boundaries for each tier and the fees assigned to each tier must be established. In the absence of clear groupings of Industry Members by message traffic, selecting the number of, boundaries, and the fees associated with each tier would be subject to some level of subjectivity. Furthermore, the establishment of tiers would need to be continually reassessed based on changes in message traffic, thereby requiring regular subjective assessments.

Accordingly, the removal of tiering from the funding model eliminates a variety of subjective analyses and judgments from the model, and simplifies the determination of Industry Member CAT fees.

(2) Proposed Amendments to the CAT NMS Plan

The Operating Committee proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) of the CAT NMS Plan to eliminate references to the use of tiered fees and related concepts.

Section 11.1(d) of the CAT NMS Plan states that “[c]onsistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, assignment of tiers, resolution of disputes, billing and collection of fees, and other related matters.” With the elimination of tiered fees, the reference to the “assignment of tiers” would no longer be applicable for the Proposed Funding Model. Therefore, the Operating Committee proposes to delete the reference to “assignment of tiers” from Section 11.1(d).

Section 11.1(d) of the CAT NMS Plan also states that:

For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.

As noted above, unlike the Original Funding Model, the Proposed Funding Model would not utilize tiered fees. Accordingly, these two sentences would no longer be applicable to the Proposed Funding Model. Therefore, the Operating Committee proposes to delete these two sentences from Section 11.1(d) of the CAT NMS Plan.

The Operating Committee proposes to delete the reference to “tiered” fees from Section 11.2(c) of the CAT NMS Plan. Section 11.2(c) of the CAT NMS Plan states that “[i]n establishing the funding of the Company, the Operating Committee shall seek: . . . (c) to establish a tiered fee structure . . . .” The Participants propose to delete the word “tiered” from this provision as the CAT fees would not be tiered under the Proposed Funding Model.

The Operating Committee also proposes to delete paragraph (iii) of Section 11.2(c) of the CAT NMS Plan. Paragraph (iii) of Section 11.2(c) of the CAT NMS Plan states that the Operating Committee shall seek to establish a

tiered fee structure in which fees charged to:

the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) be generally comparable (where for these comparability purposes, the tiered fee structures takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).

Under the Original Funding Model, the comparability provision was an important factor in determining the tiers for Industry Members and Execution Venues. Under the Proposed Funding Model, however, the comparability provision is no longer relevant, as a tiered fee structure would not be used for Industry Members or Participants.<sup>37</sup>

The Operating Committee further proposes to delete the references to tiers in Sections 11.3(a)(i) and (ii) and 11.3(b) of the CAT NMS Plan. Specifically, Section 11.3(a)(i) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues for NMS Stocks and OTC Equity Securities, will establish “at least two and no more than five tiers of fixed fees, based on an Execution Venue’s NMS Stocks and OTC Equity Securities market share.”<sup>38</sup> Similarly, Section 11.3(a)(ii) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues that execute transactions in Listed Options, will establish “at least two and no more than five tiers of fixed fees, based on an Execution Venue’s Listed Options market share.” Section 11.3(b) of the CAT NMS Plan states that the Operating Committee, when establishing fees to be payable by Industry Members, will establish “at least five and no more than nine tiers of fixed fees, based on message traffic.” The Operating Committee proposes to delete each of these references to tiers from the CAT NMS Plan.

ii Definition of Message Traffic

Message traffic will be calculated based on Industry Members’ Reportable Events reported to the CAT as defined in the CAT Reporting Technical Specifications for Industry Members (“IM Reporting Tech Specs”) as amended from time to time.<sup>39</sup> The Reportable Events may vary over time if the IM Reporting Tech Specs are

<sup>37</sup> This change also would address the comments regarding the use of comparability in the Original Funding Model. See Suspension Order at 31662-3.

<sup>38</sup> Note that, as discussed below, the Operating Committee also proposes to delete the reference to OTC Equity Securities.

<sup>39</sup> The CAT Reporting Technical Specifications for Industry Members are available at [www.catnmsplan.com](http://www.catnmsplan.com).

<sup>36</sup> See, e.g., Suspension Order at 31667.



amended.<sup>40</sup> However, Reportable Events in the current IM Reporting Tech Specs that will be counted as message traffic include, but are not limited to, such events as the New Order Event, the Order Route Event and Trade Event. In addition, under the Proposed Funding Model, message traffic will not include reporting activity related to Customer information as set forth in the CAT Reporting Customer and Account Technical Specifications for Industry Members.<sup>41</sup>

### iii. Market Maker Discounts

In the Original Funding Model, Options Market Maker message traffic and Equity Market Maker message traffic would have been treated the same as other message traffic for purposes of calculating Industry Member CAT fees.<sup>42</sup> The Commission and commenters raised questions as to whether this treatment of market maker quotes may result in an undue or inappropriate burden on competition or may lead to a reduction in market quality.<sup>43</sup> For example, commenters noted that charging Industry Members on the basis of message traffic would impact market makers disproportionately because of their continuous quoting obligations. Moreover, in the context of Options Market Makers, message traffic would include bids and offers for every Listed Options strikes and series.<sup>44</sup> To address these issues, the Operating Committee proposes to discount Options Market Maker message traffic by the trade-to-quote ratio for Listed Options when calculating message traffic for Options

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

By imposing a discount on Options Market Makers and Equity Market Makers' message traffic for the calculation of message traffic, the Operating Committee believes that the proposed CAT fees for market makers would satisfy the requirements of the funding principles set forth in Section 11.2 of the CAT NMS Plan as well as the requirements of the Exchange Act. First, the proposed market maker discounts are designed to address comments that the Original Funding Model could disproportionately affect market makers, thereby leading to a reduction in liquidity and market quality. Commenters noted that charging Industry Members on the basis of message traffic will impact market makers disproportionately because of their continuous quoting obligations. With their continuous quoting obligations, market makers would have higher levels of message traffic, and the type of message traffic (bids and offers rather than transactions) are not necessarily related to higher revenue. The SEC repeatedly has recognized the value of protecting the provision of market liquidity, and afforded market makers favorable regulatory treatment by virtue of their role as liquidity providers. For example, market makers receive favorable treatment under short sale rules,<sup>45</sup> margin rules,<sup>46</sup> pursuant to exchange fee schedules,<sup>47</sup> and under the Volcker Rule.<sup>48</sup> The proposed discounts are designed to put market makers and other market participants on a level playing field in the Proposed Funding Model, thereby preserving and incentivizing the ability of market makers to provide liquidity to the market, which liquidity ultimately

benefits all market participants. Market makers' primary role is to provide the markets with competitive prices and quotes against which others may execute their orders. Market makers update their quotes continuously throughout each trading day to reflect changes in the market, and each update is additional message traffic that will be reported to CAT. If CAT fees made it unduly costly for market makers to provide this competitive liquidity, it could reduce the available liquidity against which customers could execute orders and create worse pricing for customers that do receive executions.

Second, although the proposed discounts would provide market makers with a benefit not provided to other market participants, such discounts would not amount to unfair discrimination or an unnecessary or inappropriate burden on competition. As discussed above, the SEC has recognized repeatedly that such favorable treatment for market makers in other contexts was not unfairly discriminatory or a burden on competition in light of its positive effects on market quality, nor was it considered to involve an inequitable allocation of fees among members.

Third, the Operating Committee believes that the proposed fees appropriately take into account the distinctions in the securities trading operations of different Industry Members, and avoid disincentives, such as a reduction in market quality, as required under the funding principles of the CAT NMS Plan.<sup>49</sup> The proposed discounts recognize the different types of trading operations presented by Options Market Makers and Equity Market Makers, as well as the value of the market makers' quoting activity to the markets as a whole. Accordingly, the Operating Committee believes that the proposed discounts will not impact the ability of Options Market Makers or Equity Market Makers to provide liquidity.

Finally, the Operating Committee believes that the trade-to-quote ratio is an appropriate method for discounting market maker message traffic, including because of the relatively few quotes that ultimately execute. As discussed above, the vast majority of quotes market makers submit are intended to price the market and provide liquidity against which orders may execute. The Operating Committee proposes to use the trade-to-quote ratio for calculating the discount because it directly relates to the issue regarding the quoting requirement (*i.e.*, fewer trades per quote

<sup>40</sup> The Operating Committee recognizes that, due to the Phased Reporting approach, all Reportable Events will not be reported until all Industry Members are reporting all Reportable Events to the CAT. For example, Phase 2d CAT reporting is scheduled for December 2021, and Small Industry Non-OATS Reporters are not required to report until December 2021. In addition, certain Reportable Events, such as simple options manual orders and OTC link messages, are not required to be reported until later in the Phased Reporting. For a detailed description of such Reportable Events, see CAT Reporting Technical Specifications for Industry Members (available at [www.catnmsplan.com](http://www.catnmsplan.com)). For the Industry Member CAT reporting timeline, see, e.g., FINRA Rule 6895(c). The Operating Committee proposes to allocate costs based on the Reportable Events reported to the CAT in any relevant quarter, regardless of whether all Industry Members are reporting to the CAT or all Reportable Events are required to be reported to the CAT for the relevant quarter.

<sup>41</sup> The CAT Reporting Customer and Account Technical Specifications for Industry Members are available at [www.catnmsplan.com](http://www.catnmsplan.com).

<sup>42</sup> Note, however, that market maker discounts were included in the Prior Fee Proposal. See Prior Fee Proposal Release at 1418-9.

<sup>43</sup> See Suspension Order at 31663-4.

<sup>44</sup> *Id.* at 31664.

<sup>45</sup> See, e.g., Rule 203(b)(2)(iii) of Regulation SHO under the Exchange Act (market maker exception for short sale locate requirement).

<sup>46</sup> See, e.g., Section 7(c)(3) of the Exchange Act (market maker exception regarding margin requirements).

<sup>47</sup> See, e.g., NYSE Arca Rule 8.800-E and Market Maker Fees and Credits, NYSE Arca Fees and Charges (incentive programs for market makers).

<sup>48</sup> See Section 4.4(b) (market making exemption from the proprietary trading prohibition).

<sup>49</sup> Section 11.2(b) of the CAT NMS Plan.



for market makers due to their quoting activity) and it is an objective discounting method.

(a) Options Market Maker Discount

To address issues regarding the potential burdens on competition and market quality of including Options Market Maker message traffic in the calculation of message traffic, the Operating Committee proposes to discount Options Market Maker message traffic based on the trade-to-quote ratio for options when calculating the message traffic for Options Market Makers.<sup>50</sup> Specifically, for each Options Market Maker, a discount would be applied to (1) all message traffic reported to the CAT by the Options Market Maker related to an order originated by a market maker in its market making account for a security in which it is registered, regardless of where the order is ultimately routed or executed;<sup>51</sup> and (2) all message traffic for which a “quote sent time” is reported by an Options Exchange on behalf of the given Options Market Maker.

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

Accordingly, each Options Market Maker’s discounted message traffic

<sup>50</sup> The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. See Securities Exchange Act Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quote messages that are reported to the CAT by Options Exchanges will be included in the calculation of total message traffic and for the calculation of individual Options Market Makers message traffic, subject to the proposed discounts.

<sup>51</sup> Under the current version of the IM Reporting Tech Specs, the discount would apply to new order messages and all related messages reported to the CAT by an Options Market Maker with an accountHolderType = O. See CAT FAQ C5 (available at [www.catnmsplan.com](http://www.catnmsplan.com)). The discount would not apply to messages by an Industry Member that are associated with any other accountHolderType. The IM Reporting Tech Specs may be amended from time to time and this designation could be changed.

count would be calculated by multiplying its message traffic by the options trade-to-quote ratio. The Options Market Maker’s CAT fee then would be calculated by multiplying its discounted percentage of the total message traffic of all Industry Members during the relevant time<sup>52</sup> period by the Industry Member Allocation, subject to the Minimum Industry Member CAT Fee and the Maximum Industry Member CAT Fee.

(b) Equity Market Maker Discount

Similar to the treatment of Options Market Maker message traffic, the Operating Committee proposes to discount Equity Market Maker message traffic based on the trade-to-quote ratio for NMS Stocks when calculating the message traffic for Equity Market Makers. Specifically, for each Equities Market Maker, a discount would be applied to all message traffic reported to the CAT by the Equities Market Maker related to an order originated by a market maker in its market making account for a security in which it is registered,<sup>53</sup> regardless of where the order is ultimately routed or executed.<sup>54</sup>

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

The Equity Market Maker CAT fee would be calculated in the same manner as the Options Market Maker CAT fee. Each Equity Market Maker’s discounted message traffic count would be calculated by multiplying its message traffic by the NMS Stock trade-to-quote ratio. The Equity Market Maker CAT fee then would be calculated by

<sup>52</sup> Note that the total message traffic of all Industry Members during the relevant time period will be calculated using the discounted total for all Options Market Makers.

<sup>53</sup> Note that Equity Market Makers do not have a quote sent time exemption comparable to the Options Market Maker quote sent time exemption, as discussed above.

<sup>54</sup> Under the current version of the IM Reporting Tech Specs, the discount would apply to new order messages and all related messages reported to the CAT by an Equities Market Maker with an accountHolderType = O. See CAT FAQ C5 (available at [www.catnmsplan.com](http://www.catnmsplan.com)). The discount would not apply to messages by the Industry Member that are associated with any other accountHolderType. The IM Reporting Tech Specs may be amended from time to time and this designation could be changed.

multiplying its discounted percentage of the total message traffic of all Industry Members during the relevant time period<sup>55</sup> by the Industry Member Allocation, subject to the Minimum Industry Member CAT Fee and the Maximum Industry Member CAT Fee.

(c) Proposed Amendments

To implement the proposed market maker discounts, the Operating Committee proposes to revise Section 11.3(b) of the CAT NMS Plan to reflect the application of such discounts. Specifically, the Operating Committee proposes to amend the statement in Section 11.3(b) that “[t]he Operating Committee will establish fixed fees to be payable by Industry Members, based on the message traffic generated by such Industry Members” to add the concept of the market maker discounts. Specifically, the Operating Committee proposes to qualify this statement by the phrase “subject to . . . discounts for market maker message traffic.”

iv. Minimum Industry Member CAT Fee

The Operating Committee proposes to require all Industry Members to pay at least a minimum fee for each relevant period. Specifically, the Operating Committee proposes to impose a Minimum Industry Member CAT Fee of \$125 per quarter on an Industry Member if its CAT fee would be less than \$125 per quarter when calculated based on message traffic. All Industry Members required to report to the CAT, including those that have not yet begun to report to the CAT due to the phased implementation schedule for the CAT, would be subject to the Minimum Industry Member CAT Fee. If any Industry Member is required to pay the Minimum Industry Member CAT Fee, the total additional amount paid by all such Industry Members over the amount they otherwise would have paid as a result of their message traffic calculation would be discounted from all Industry Members other than those that were subject to a Minimum Industry Member CAT Fee in accordance with their message traffic percentage.<sup>56</sup> Such a minimum fee satisfies the purposes of the CAT as well as the funding principles of the CAT NMS Plan.

A minimum fee of \$125 per quarter ensures that all Industry Members

<sup>55</sup> Note that the total message traffic of all Industry Members during the relevant time period will be calculated using the discounted total for all Equity Market Makers.

<sup>56</sup> Options Market Makers and Equity Market Makers will be required to pay the Minimum Industry CAT Member Fee if their quarterly CAT fee calculated with the market maker discounts is less than \$125 per quarter.

provide a meaningful contribution to the funding of the CAT, as the CAT is intended to assist all market participants by creating enhanced oversight of the markets, and thus benefits all Industry Members, including those with small levels of message traffic.<sup>57</sup> Because some Industry Members may have very small levels of message traffic, their proposed CAT fee may be commensurately very small (e.g., they could pay a CAT fee of pennies). However, the size of the \$125 minimum quarterly fee is not so large as to be overly burdensome to Industry Members with small levels of message traffic. Accordingly, the minimum fee would be in keeping with the funding principle requiring the funding model to “avoid disincentives such as placing an inappropriate burden on competition and a reduction in market quality.”<sup>58</sup>

Such a minimum fee also would contribute to the ease of billing and other administrative functions, in accordance with the funding principle set forth in Section 11.2(d) of the CAT NMS Plan.<sup>59</sup> Without such a minimum fee, the Participants would be required to oversee the payment of fees as little as pennies for certain Industry Members given their limited message traffic.

To implement the Minimum Industry Member CAT Fee, the Operating Committee proposes to revise Section 11.3(b) of the CAT NMS Plan to reflect the imposition of a minimum fee. Specifically, the Operating Committee proposes to amend the statement in Section 11.3(b) that “[t]he Operating Committee will establish fixed fees<sup>60</sup> to be payable by Industry Members, based on the message traffic generated by such Industry Members” to add the concept of the minimum fee. Specifically, the Operating Committee proposes to qualify this statement with the phrase “subject to a base minimum fee.”

#### v. Maximum Industry Member CAT Fee

The Operating Committee proposes to establish a maximum fee to be paid by Industry Members. Under the Proposed Funding Model, Industry Members would pay a CAT fee based on their proportionate message traffic in NMS Stocks, subject to a maximum fee. The maximum fee for Industry Members would be the fee calculated based on 8% of the total message traffic for Industry Members. If an Industry Member’s fee is limited to the Maximum

Industry Member CAT Fee, any excess amount which the Industry Member otherwise would have paid as a fee above such Maximum Industry Member CAT Fee would be re-allocated among all Industry Members including any Industry Members subject to the Maximum Industry Member CAT Fee and any Industry Members subject to the Minimum Industry Member CAT Fee in accordance with its message traffic.

The imposition of the Maximum Industry Member CAT Fee serves as a method to institute a cap on fees in order to fairly allocate costs to Industry Members as using message traffic alone potentially may result in certain Industry Members paying a significant allocation of Total CAT Costs. In this way, the proposed Maximum Industry Member CAT Fee would address the potential for outsized fees that were previously addressed via the tiering and comparability provisions set forth in the Original Funding Model and the Prior Fee Proposal. These provisions sought to impose similar levels of fees on comparable CAT Reporters.<sup>61</sup> Specifically, the Operating Committee proposes to limit the Industry Member CAT fee to 8% of the total message traffic as 8% would limit Industry Members to paying a fee comparable to the highest fee for Participant complexes. For example, using the CAT Data from the fourth quarter of 2020, the top three Industry Members would be subject to the Maximum Industry Member CAT Fee, as their message traffic exceeds 8% of the total Industry Member message traffic. These three Industry Members would be subject to annual CAT fees in the range of \$5 to 6 million. Similarly, the Participant complexes with the highest CAT fees would pay an annual CAT fee in a similar range. Without the imposition of the Maximum Industry Member CAT Fee, the Industry Member with the highest CAT fee would pay almost \$10 million for its annual CAT fee.

The Operating Committee proposes to revise Section 11.3(b) of the CAT NMS Plan to implement the proposed Maximum Industry Member CAT Fee. Specifically, the Operating Committee proposes to amend Section 11.3(b) of the CAT NMS Plan to state that

any Industry Member shall pay a maximum fee established by the Operating Committee instead of the higher fee calculated based on such Industry Member’s message traffic. If an Industry Member’s fee is limited to such maximum fee, any excess amount which the Industry Member otherwise would have paid

as a fee above such maximum fee will be re-allocated among all Industry Members, including any Industry Member that is subject to the maximum fee or subject to the base minimum fee, in accordance with their message traffic.

#### vi. No Fixed Fees

The Operating Committee proposes to eliminate references in the CAT NMS Plan to “fixed fees” used with regard to the CAT fees to be paid by Industry Members. The CAT fees to be paid by Industry Members may vary from time to time in accordance with their message traffic. Accordingly, the Operating Committee proposes to replace the reference to “fixed fees” for Industry Members in Section 11.3(b) with references to “fees.”

#### 4. Participant CAT Fee

Like Industry Members, Participants would also be required to pay a CAT fee. The total CAT fees to be paid by Participants as a group would be designed to cover the Participant Allocation. Each Participant would pay a minimum CAT fee of 0.75% of the Participant Allocation, referred to as the “Minimum Participant Fee.” The Participant Allocation minus the total Minimum Participant Fees required to be paid by each Participant (the “Adjusted Participant Allocation”) would be divided between Equities Participants and Options Participants. Equities Participants as a group would pay 60% of the Adjusted Participant Allocation (“Equities Participant Allocation”) and Options Participants as a group would pay 40% of the Adjusted Participant Allocation (the “Options Participant Allocation”). The Equities Participant Allocation would be divided among Equities Participants based on market share of NMS Stocks, although FINRA would not pay more than the Maximum Equities Participant Fee (plus any additional re-allocation of costs above the fee cap). The Options Participant Allocation would be divided among Options Participants based on market share in Listed Options.

The Operating Committee notes that allocating the Participant Allocation among the Participants is different from allocating the Industry Member Allocation among Industry Members. Unlike Industry Members, the Participants are each parties to the CAT NMS Plan and, therefore, have been engaged in negotiations among themselves regarding the allocation of CAT costs among Participants and the amendment of the CAT NMS Plan to address the CAT funding model. Accordingly, the Participants believe that the proposed method for allocating

<sup>57</sup> See, e.g., CAT NMS Plan Approval Order at 84698.

<sup>58</sup> Section 11.2(e) of the CAT NMS Plan.

<sup>59</sup> Section 11.2(d) of the CAT NMS Plan.

<sup>60</sup> As noted below, the Operating Committee also proposes to delete the term “fixed” from this provision.

<sup>61</sup> The proposed deletion of the tiering and comparability provisions are discussed above.

the costs among Participants should be afforded some deference, provided the proposed fees satisfy the requirements of the Exchange Act and the CAT NMS Plan, which are discussed in detail in Section A.8 below.

#### a. Minimum Participant Fee

The Operating Committee proposes to require each Participant to pay at least a minimum CAT fee, regardless of its market share. Specifically, the Operating Committee proposes to require each Participant to pay a minimum CAT fee of 0.75% of the Participant Allocation, referred to as the Minimum Participant Fee. The Minimum Participant Fee will be paid by each registered national securities exchange that is a Participant and each registered national securities association that is a Participant, not by each market operated by the Participants. This Minimum Participant Fee is intended to ensure that all Participants provide a meaningful contribution to the funding of the CAT, as the CAT is intended to assist all market participants by creating enhanced oversight of the markets.<sup>62</sup> All Participants, regardless of their market share, are required to regulate their markets and members, and they may do so using the CAT. Therefore, all Participants receive benefits from the CAT and should pay a meaningful portion of the CAT costs. However, the size of the minimum fee is not so large as to be overly burdensome to Participants with a smaller market share.

The Operating Committee proposes to revise Section 11.3(a) of the CAT NMS Plan to reflect the imposition of the Minimum Participant Fee. Specifically, the Operating Committee proposes to amend Section 11.3(a) of the CAT NMS Plan to state that “[t]he Operating Committee will establish a minimum fee to be payable by each Participant” in addition to fees based on market share.

In addition, as discussed below, the Minimum Participant Fee would be included in the fee schedule for the Consolidated Audit Trail Funding Fees set forth in Appendix B of the CAT NMS Plan. Proposed paragraph (a)(1)(A) of Appendix B of the CAT NMS Plan would state that each Participant would pay a CAT fee that includes the Minimum Participant Fee. Paragraph (b)(2) of Appendix B would state that “[t]he Minimum Participant Fee is 0.75% of the Participant Allocation.” Paragraph (b)(2) of Appendix B would further clarify how the Minimum Participant Fee would be imposed by stating that “[f]or avoidance of doubt,

the Minimum Participant Fee will be paid by each registered national securities exchange that is a Participant and each registered national securities association that is a Participant.”

#### b. Allocation of Adjusted Participant Allocation Among Participants

The Participant Allocation minus the total Minimum Participant Fees required to be paid by each Participant, referred to as the “Adjusted Participant Allocation,” will be divided among the Participants as described below. The Operating Committee proposes to include this definition of “Adjusted Participant Allocation” in proposed paragraph (b)(3) of the Appendix B. Specifically, proposed paragraph (b)(3) of Appendix B would state that “[t]he Adjusted Participant Allocation is the Participant Allocation minus the sum of all Minimum Participant Fees required to be paid by each Participant.”

#### i. Use of Market Share

Under the Proposed Funding Model, the Adjusted Participant Allocation would be allocated among Participants based on market share. The use of market share for this purpose is in accordance with the CAT NMS Plan as adopted by the SEC. Specifically, the CAT NMS Plan contemplates Participants paying a CAT fee based upon market share.<sup>63</sup> The Operating Committee analyzed various alternative methods for allocating costs among Participants other than market share and continued to determine that using market share would equitably allocate CAT fees among Participants. In contrast to Industry Members, which determine the degree to which they produce message traffic that constitutes Reportable Events, the Reportable Events of Participants are largely derivative of quotations and orders received from Industry Members that they are required to display. The business models for Participants, however, generally are focused on executions and/or trade reporting in their marketplaces. As a result, the Operating Committee believes that it is more equitable to charge Participants based on their market share rather than their message traffic. Moreover, relying on market share would provide the Participants with a straightforward calculation using readily available market data. Such a basic calculation would be consistent with the CAT funding principle, which requires the model to “provide for ease of billing and

other administrative functions.”<sup>64</sup> Finally, the Participants have been voluntarily allocating CAT costs based on market share for the past eight years and are comfortable that allocating CAT cost based on market share is an appropriate way to allocate CAT costs, as it is consistent with the CAT NMS Plan.

The Operating Committee proposes to amend Section 11.3(a) of the CAT NMS Plan to clarify that the Participants will pay a fee based on market share. Specifically, the Operating Committee proposes to add the phrase “based on market share” to Section 11.3(a) of the CAT NMS Plan. With this change and the changes discussed above, Section 11.3(a) of the CAT NMS Plan would state that “[t]he Operating Committee will establish a minimum fee to be payable by each Participant in addition to fees based on market share to be payable by Participants as provided in this Section 11.3(a).”

#### ii. No Tiered Fees for Participants

The Operating Committee proposes to eliminate the use of tiered fees for Participants in the Proposed Funding Model. The Operating Committee proposes to allocate the Adjusted Participant Allocation among Participants based on the Participant’s market share without relying on tiered fees for the reasons discussed above with regard to Industry Members. As discussed above, the Operating Committee proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) to eliminate the concept of tiered fees from the CAT NMS Plan.

#### iii. 60%–40% Allocation Between Equities Participants and Options Participants

The Operating Committee proposes to divide the Adjusted Participant Allocation between Equities Participants and Options Participants because it is difficult to compare market share between asset classes (*i.e.*, equity shares versus options contracts). This bifurcated approach to allocating costs among Equities Participants and Options Participants is consistent with the CAT NMS Plan, which specifically contemplates allocating Participant CAT fees based on options and equity activity.<sup>65</sup> Note that, unlike the Original Funding Model, the Operating Committee has determined not to allocate any portion of the Adjusted Participant Allocation based on OTC Equity Securities market share.

<sup>62</sup> CAT NMS Plan Approval Order at 84698.

<sup>63</sup> See Sections 11.2(c), 11.3(a)(i) and 11.3(a)(ii) of the CAT NMS Plan.

<sup>64</sup> Section 11.2(d) of the CAT NMS Plan.

<sup>65</sup> See Section 11.3(a) of the CAT NMS Plan.

Under the Proposed Funding Model, the Equities Participant Allocation would be 60% of the Adjusted Participant Allocation and, correspondingly, the Options Participants Allocation would be 40% of the Adjusted Participant Allocation. If a Participant has both options and equities market share, then such Participant will be treated as both an Equities Participant and an Options Participant.<sup>66</sup>

The Operating Committee believes that the proposed 60%–40% allocation between Equities Participants and Options Participants is an appropriate allocation among Participants. The allocation among the Equities and Options Participants has been the subject of negotiations among the Participants. In addition, in the Prior Fee Proposal, the Operating Committee proposed a 67%/33% allocation between Equity Execution Venues and Options Execution Venues based on the comparability concept.<sup>67</sup>

As discussed below, the 60%–40% allocation of the Adjusted Participant Allocation between Equities Participants and Options Participants would be included in the fee schedule for the Consolidated Audit Trail Funding Fees in the CAT NMS Plan. Proposed paragraph (b)(4) of Appendix B of the CAT NMS Plan would state that “[t]he Equities Participant Allocation is 60% of the Adjusted Participant Allocation,” and proposed paragraph (b)(5) of Appendix B of the CAT NMS Plan would state that “[t]he Options Participant Allocation is 40% of the Adjusted Participant Allocation.”

#### iv. Equities Participant Allocation

The Equities Participant Allocation would be divided among Equities Participants based on market share of NMS Stocks in accordance with Section 11.3(a)(i) of the CAT NMS Plan. An Equities Participant’s market share in NMS Stocks would be determined by calculating each Equities Participant’s proportion of the total volume of NMS Stock shares reported by all Equities Participants during the relevant time period. Accordingly, in addition to the Minimum Participant Fee, each Equities Participant will pay a CAT fee that is calculated by multiplying (x) each Equities Participant’s percentage of the total volume of NMS Stock shares

during the relevant time period by (y) the Equities Participant Allocation, subject to the Maximum Equities Participant Fee.

As discussed below, the Operating Committee proposes to include the allocation of the Equities Participant Allocation in the fee schedule for the Consolidated Audit Trail Funding Fees in the CAT NMS Plan. Proposed paragraph (a)(1)(B) of Appendix B of the CAT NMS Plan would state that Equities Participants would pay a CAT fee calculated by adding the sum of the Minimum Participant Fee and the lesser of “the product of multiplying the Equities Participant’s percentage of total market share of NMS Stocks for all Equities Participants against the Equities Participant Allocation; or (ii) the Maximum Equities Participant Fee, if applicable.”

#### (a) Treatment of OTC Equity Securities

Under the Original Funding Model, market share for a national securities association was calculated based on the share volume of trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities. Under the Proposed Funding Model, the Operating Committee proposes to calculate market share for national securities associations solely based on share volume of trades reported in NMS Stocks. Correspondingly, [sic] the calculation of total market share and market share for each Equities Participant would not include reported share volume in OTC Equity Securities.

The Operating Committee proposes to calculate market share for national securities associations without reference to trades reported in OTC Equity Securities. Many OTC Equity Securities are priced at less than one dollar—and a significant number at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks. Because the proposed CAT fees for Equities Participants are based on market share calculated by share volume, FINRA would likely be subject to higher fees if OTC Equity Securities were included in the calculation of market share.

The Operating Committee proposes to exclude OTC Equity Securities share volume in the calculation of market share, rather than to use a discounting approach proposed in the Prior Fee Proposal. In the Prior Fee Proposal, the Operating Committee proposed to

discount the share volume of trades reported in OTC Equity Securities when calculating the market share for national securities associations and Execution Venue ATs.<sup>68</sup> At this time, the Operating Committee has determined that excluding OTC Equity Share volume entirely would be a more simple and straightforward approach from an administrative perspective. The Operating Committee believes that this approach to OTC Equity Share volume addresses comments about prior fee proposals regarding the different trading characteristics of NMS Stocks and OTC Equity Securities.<sup>69</sup>

To implement this proposed change, the Operating Committee proposes to delete the references to OTC Equity Securities from Section 11.3(a)(i) of the CAT NMS Plan. Specifically, the Operating Committee proposes to delete the phrase “or OTC Equity Securities” from Section 11.3(a)(i)(B) of the CAT NMS Plan, which states in relevant part “in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities.” Similarly, the Operating Committee proposes to delete the phrase to “or OTC Equity Securities” in the statement in Section 11.3(a)(i) of the CAT NMS Plan that “market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported.”

#### (b) Maximum Equities Participant Fee

The Operating Committee proposes to establish a maximum fee to be paid by a national securities association that is a Participant. Currently, FINRA is the only national securities association that is a Participant in the CAT NMS Plan. Under the Proposed Funding Model, FINRA would pay a CAT fee based on its proportionate market share in NMS Stocks, subject to a maximum fee. The maximum fee allocated to FINRA would be the greater of (x) 20% of the Equities Participant Allocation or (y) the highest CAT fee required to be paid by any other Equities Participant plus 5% of such highest CAT fee (the “Maximum Equities Participant Fee”). If FINRA’s fee is limited to the Maximum Equities Participant Fee, any excess amount which FINRA otherwise would have

<sup>66</sup> The Operating Committee proposes to clarify this point in the CAT NMS Plan by including the following statement in proposed paragraph (a)(1) of Appendix B of the CAT NMS Plan: “For the avoidance of doubt, Participants with both options and equities market share shall be considered both Equities Participants and Options Participants.”

<sup>67</sup> See Prior Fee Proposal at 1408.

<sup>68</sup> Prior Fee Proposal at 1406.

<sup>69</sup> Suspension Order at 31664–5.

paid as a fee above such Maximum Equities Participant Fee would be re-allocated among all Equities Participants including FINRA in accordance with their market share.

The imposition of the Maximum Equities Participant Fee serves as a method to institute a cap on fees in order to fairly allocate costs to FINRA given that a market share approach potentially may result in FINRA having a significant allocation given the large volume of NMS Stock activity that is subject to trading reporting on FINRA facilities, and potentially may not accurately reflect a fair allocation of costs to FINRA. In this way, the proposed Maximum Equities Participant Fee would address the potential for outsized fees that were previously addressed via the tiering and comparability provisions set forth in the Original Funding Model and the Prior Fee Proposal. These provisions sought to impose similar levels of fees on comparable CAT Reporters.<sup>70</sup> Finally, along with the other components of the calculation of the Participant CAT fee, the Operating Committee believes the use of market share is a fair and reasonable basis for assessing regulatory usage, expense and burden among the Participants. FINRA is expected to be one of the largest regulatory users of the CAT and it would be fair and reasonable for the FINRA to pay a proportionate percentage of the CAT fees commensurate with FINRA's comparable market share, which is subject to the Maximum Equities Participant Fee and also not subject to any fee for OTC Equity Security market share.

The Operating Committee proposes to revise Section 11.3(a)(i) of the CAT NMS Plan to implement the proposed Maximum Equities Participant Fee. Specifically, the Operating Committee proposes to amend Section 11.3(a)(i) of the CAT NMS Plan to state that

any Participant that is a national securities association shall pay a maximum fee established by the Operating Committee instead of the higher fee calculated based on such Participant's market share. If a Participant's fee is limited to such maximum fee, any excess amount which the Participant otherwise would have paid as a fee above such maximum fee will be re-allocated among all Equities Participants (including any Equities Participant subject to the maximum fee) in accordance with their market share.

In addition, as discussed below, the Operating Committee proposes to include the Maximum Equities

<sup>70</sup> The proposed deletion of the tiering and comparability provisions are discussed above.

Participant Fee in the fee schedule for the Consolidated Audit Trail Funding Fees in the CAT NMS Plan. Proposed paragraph (a)(1)(B)(ii) of Appendix B of the CAT NMS Plan would describe the application of the Maximum Equities Participant Fee. Specifically, proposed paragraph (a)(1)(B) would state that Equities Participants would pay a CAT fee calculated by adding the sum of the Minimum Participant Fee and the following:

(B) For Equities Participants, the lesser of:  
(i) the product of multiplying the Equities Participant's percentage of total market share of NMS Stocks for all Equities Participants against the Equities Participant Allocation; or  
(ii) the Maximum Equities Participant Fee, if applicable; and

If any Participant's fee is limited to the Maximum Equities Participant Fee, any excess amount which such Participant otherwise would have paid as a fee above such Maximum Equities Participant Fee will be re-allocated among all Equities Participants (including any Equities Participant subject to the Maximum Equities Participant Fee) in accordance with their market share.

Furthermore, proposed paragraph (b)(6) of Appendix B of the CAT NMS Plan would state:

The Maximum Equities Participant Fee is the greater of (x) 20% of the Equities Participant Allocation or (y) the highest CAT fee required to be paid by any other Equities Participant plus 5% of such highest CAT fee. The Maximum Equities Participant Fee only applies to a Participant that is a national securities association.

#### v. Options Participant Allocation

The Options Participant Allocation would be divided among Options Participants based on market share in Listed Options in accordance with Section 11.3(a)(ii) of the CAT NMS Plan. An Options Participant's market share in Listed Options would be determined by calculating the total volume of Listed Options contracts reported by all Options Participants during the relevant time period. Accordingly, each Options Participant would pay a CAT fee that is calculated by multiplying (x) each Options Participant's percentage of the total market share in Listed Options during the relevant time period by (y) the Options Participant Allocation.

As discussed below, the Operating Committee proposes to include the allocation of the Options Participant Allocation in the fee schedule for the Consolidated Audit Trail Funding Fees in the CAT NMS Plan. Proposed paragraph (a)(1)(C) of Appendix B of the CAT NMS Plan would state that Options Participants would pay a CAT fee calculated by adding the sum of the Minimum Participant Fee and "the

product of multiplying the Participant's percentage of total market share of Listed Options contracts for all Options Participants against the Options Participant Allocation."

#### vi. No Fixed Fees

The Operating Committee proposes to eliminate references to "fixed fees" used with regard to the CAT fees to be paid by Participants. As discussed above with regard to Industry Member CAT fees, the CAT fees to be paid by Participants may vary from time to time in accordance with their market share. Accordingly, the Operating Committee proposes to replace the references to "fixed fees" for Participants in Sections 11.3(a), 11.3(a)(i) and 11.3(a)(ii) with references to "fees."

### 5. Proposed CAT Fees

#### a. Participant CAT Fee

To recover the costs of the CAT going forward, the Operating Committee proposes to charge Participants a quarterly CAT fee calculated based on the allocation of Total CAT Costs pursuant to the Proposed Funding Model. The Operating Committee will use the costs set forth in the annual operating budget as the Total CAT Costs in the calculation of the Participant CAT Fee.<sup>71</sup> Specifically, the Total CAT Costs budgeted for the upcoming year will be the costs set forth in the annual operating budget for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. Section 11.1(a) states that "[o]n an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenue to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company." In addition, to address potential changes in the budget during the year, the total budgeted costs for the CAT for the relevant year may be adjusted on a quarterly basis as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. To the extent that the Operating Committee adjusts the total

<sup>71</sup> Note that all Participant CAT fees would be paid prospectively based on budgeted Total CAT Costs. This contrasts with the Historical CAT Assessment, the Period 3 CAT Fee and the Period 4 CAT Fee for the Industry Members which would be paid based on actual past costs incurred due to the application of the Financial Accountability Milestones. The Quarterly CAT Fee for Industry Members also would be paid prospectively based on budgeted Total CAT Costs.

budgeted costs for the CAT for the relevant year during its quarterly budget review, the adjusted total budgeted costs for the CAT will be used in calculating the remaining quarterly CAT fees for that year. Using budgeted CAT costs, rather than CAT costs already incurred, allows the Consolidated Audit Trail, LLC to collect fees prior to when bills become payable.

The Total CAT Costs budgeted for the year would be comprised of all fees, costs and expenses estimated to be incurred by or for the Company in connection with the development, implementation and operation of the CAT during this period. These CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve. The Plan Processor costs would consist of the Plan Processor's ongoing costs, including development costs. This amount would be based upon the fees due to the Plan Processor pursuant to the Company's agreement with the Plan Processor. Insurance costs would include cyber insurance and director liability insurance. The third-party support costs would include legal fees, consulting fees, vendor fees and audit fees. In addition, the Operating Committee aims to accumulate the necessary funds to establish an operating reserve for the Company through the CAT fees charged to CAT Reporters. As set forth in Section 11.1(a) of the CAT NMS Plan, the Operating Committee may include in the budget "funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company."<sup>72</sup> As required by Section 11.1(c) of the CAT NMS Plan, any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>73</sup> Using these budgeted Total CAT Costs, the Operating Committee will calculate the quarterly CAT fee owed by each Participant in accordance with the Proposed Funding Model.

To implement the Participant CAT fees, the Exchange proposes to add a fee schedule, entitled "Consolidated Audit

Trail Funding Fees," to Exhibit [sic] B of the CAT NMS Plan. As discussed above, proposed paragraph (a) states the following:

Each Participant shall pay to Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC a CAT fee calculated as follows:

(1) Commencing upon SEC approval of the CAT fee, each Participant shall pay a quarterly CAT fee based on market share from the prior quarter calculated by adding the sum of the following:

(A) For all Participants, the Minimum Participant Fee;

(B) For Equities Participants, the lesser of:

(i) the product of multiplying the Equities Participant's percentage of total market share of NMS Stocks for all Equities Participants against the Equities Participant Allocation; or

(ii) the Maximum Equities Participant Fee, if applicable; and

If any Participant's fee is limited to the Maximum Equities Participant Fee, any excess amount which such Participant otherwise would have paid as a fee above such Maximum Equities Participant Fee will be re-allocated among all Equities Participants (including any Equities Participant that is subject to the Maximum Equities Participant Fee) in accordance with their market share.

(C) For Options Participants, the product of multiplying the Participant's percentage of total market share of Listed Options contracts for all Options Participants against the Options Participant Allocation;

For the avoidance of doubt, Participants with both options and equities market share shall be considered both Equities Participants and Options Participants.

As described above, proposed paragraph (b) of Appendix B of the CAT NMS Plan would provide the variables necessary to calculate Participant CAT fees in accordance with paragraph (a). Specifically, paragraph (b) would state that "[t]he CAT fees set forth in paragraph (a) will be calculated based on the following." Proposed paragraph (b)(1) of the fee schedule would state that "[t]he Industry Member Allocation for each quarter shall be 75% of 1/4th of the Total CAT Costs for the relevant year. The Participant Allocation for each quarter shall be 25% of 1/4th of the Total CAT Costs for the relevant year." Proposed paragraph (b)(2) of the fee schedule would state that "[t]he

Minimum Participant Fee is 0.75% of the Participant Allocation. For avoidance of doubt, the Minimum Participant Fee will be paid by each registered national securities exchange that is a Participant and each registered national securities association that is a Participant." Proposed paragraph (b)(3) of the fee schedule would state that "[t]he Adjusted Participant Allocation is the Participant Allocation minus the sum of all Minimum Participant Fees required to be paid by each Participant." Proposed paragraph (b)(4) of the fee schedule would state that "[t]he Equities Participant Allocation is 60% of the Adjusted Participant Allocation." Proposed paragraph (b)(5) of the fee schedule would state that "[t]he Options Participant Allocation is 40% of the Adjusted Participant Allocation." Proposed paragraph (b)(6) of the fee schedule would state that the "[t]he Maximum Equities Participant Fee is the greater of (x) 20% of the Equities Participant Allocation or (y) the highest CAT fee required to be paid by any other Equities Participant plus 5% of such second highest CAT fee. The Maximum Equities Participant Fee only applies to a Participant that is a national securities association."

Finally, proposed paragraph (b)(7) of the fee schedule would state that "[t]he Total CAT Costs shall be the total annual budgeted costs for the CAT for the relevant year." Proposed paragraph (b)(7) of the fee schedule would further state that "[t]he total budgeted costs for the CAT for the relevant year may be adjusted on a quarterly basis as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. To the extent that the Operating Committee adjusts the total budgeted costs for the CAT for the relevant year during its quarterly budget review, the adjusted total budgeted costs for the CAT will be used in calculating the remaining quarterly CAT fees for that year."

The following chart summarizes the imposition of the Quarterly CAT Fee for Participants each year commencing upon approval by the SEC and continuing each year thereafter.

Quarterly CAT fee	Quarterly participant allocation	CAT data used for market share calculation	Payment due
Quarterly CAT Fee #1 .....	1/4th of 25% of the budgeted annual CAT costs for the relevant year.	CAT Data from first quarter of the relevant year.	2nd quarter of the relevant year.
Quarterly CAT Fee #2 .....	1/4th of 25% of the budgeted annual CAT costs for the relevant year.	CAT Data from second quarter of the relevant year.	3rd quarter of the relevant year.
Quarterly CAT Fee #3 .....	1/4th of 25% of the budgeted annual CAT costs for the relevant year.	CAT Data from third quarter of the relevant year.	4th quarter of the relevant year.

<sup>72</sup> Although the Operating Committee may determine at its discretion that a different level of reserves is appropriate in the future, the Operating

Committee proposes to include in the budget an operational reserve comprised of three months of

ongoing CAT costs, such as Plan Processor costs, third party support costs and insurance costs.

<sup>73</sup> CAT NMS Plan Approval Order at 84792.

Quarterly CAT fee	Quarterly participant allocation	CAT data used for market share calculation	Payment due
Quarterly CAT Fee #4 .....	1/4th of 25% of the budgeted annual CAT costs for the relevant year.	CAT Data from fourth quarter of the relevant year.	1st quarter of year following the relevant year.

Note that, if the SEC approves the proposed CAT fees mid-year, the Operating Committee proposes to require Participants to commence payment of the Participant CAT Fee in the first quarter after the quarter in which the SEC approves the fee. Participants will be required to pay a quarterly fee for the remaining quarter(s) of the year based on CAT Data from the prior quarter, using the portion of the annual budget for those remaining quarter(s) of the year. For example, if the SEC approves the CAT fees in the third quarter of 2021, then the Participants would be required to pay their first quarterly CAT fee during the fourth quarter of 2021 based on the market share calculation using CAT Data from the third quarter of 2021 and one quarter of the budgeted annual CAT costs for 2021.

#### b. Industry Member CAT Fees

The Operating Committee has determined to charge Industry Members fees related to CAT costs in accordance with the Proposed Funding Model. To implement these CAT fees, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act to propose to add a section entitled “Consolidated Audit Trail Funding Fees” to its fee schedule, and to describe the following CAT fees in that section. Because the Participants have funded the CAT to date and CAT fees imposed on Industry Members are guided by the Financial Accountability Milestones, the Operating Committee proposes four categories of CAT fees: the Historical CAT Assessment (for pre-Period 1, Period 1 and Period 2), Period 3 CAT Fee, Period 4 CAT Fee, and the Quarterly CAT Fee.

#### i. Historical CAT Assessment (for Pre-Period 1, Period 1 and Period 2)

The Operating Committee determined to charge Industry Members a historical assessment (“Historical CAT Assessment”) to recover certain CAT costs incurred prior to January 1, 2021 (“Historical CAT Assessment Costs”). Specifically, the Historical CAT Assessment is intended to collect from Industry Members 75% of certain costs incurred through June 22, 2020, the effective date for the Financial Accountability Milestones,<sup>74</sup> certain

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

The Participants have already funded all CAT costs incurred prior to January 1, 2021. Accordingly, only Industry Members would be required to pay the Historical CAT Assessment. To implement the Historical CAT Assessment, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act describing the Historical CAT Assessment.

The following describes the Historical CAT Assessment Costs for the period prior to June 22, 2020 and the period from June 22, 2020 through December 31, 2020 in more detail. The Total CAT Costs incurred prior to June 22, 2020 (other than Excluded Costs and certain costs related to the conclusion of the relationship with Thesys CAT, LLC) is \$153,268,597. The Historical CAT Assessment to be paid by Industry Members would be designed to recover 75% of these total costs, which is \$114,951,448. These cost figures are further described below.

• In accordance with Section 11.1(c) of the CAT NMS Plan, the Historical CAT Assessment Costs would include “fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.” Specifically, the Historical CAT Assessment Costs include costs incurred from 2012 through November 20, 2016 related to the development of the National Market System Plan Governing the Process of Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail<sup>75</sup> (“Selection Plan”) and the CAT NMS Plan as well

as the Plan Processor selection process pursuant to the Selection Plan. The Total CAT Costs incurred during this period are \$13,842,881. The Historical CAT Assessment would be designed to recover 75% of these total costs, which is \$10,382,161.

• The Historical CAT Assessment Costs would include costs incurred after the formation of the CAT NMS Plan and prior to the selection of Thesys CAT, LLC as the Plan Processor for the CAT, which covers the period from November 21, 2016 through April 5, 2017. The total cost for this period is \$2,933,869. The Historical CAT Assessment would be designed to recover 75% of these total costs, which is \$2,200,402.

• The Historical CAT Assessment Costs would include costs incurred during the period in which Thesys CAT, LLC was the Plan Processor for the CAT, which was April 6, 2017 through March 28, 2019. The total costs for this period are \$106,256,258. The Participants, however, have determined to exclude from the Historical CAT Assessment Costs all costs incurred from November 15, 2017 through November 15, 2018 (“Excluded Costs”) due to the delay in the reporting to the CAT. The Excluded Costs are \$48,874,937. Accordingly, the total costs for this period are \$57,381,321. The Historical CAT Assessment would be designed to recover 75% of these total costs, which is \$43,035,991.

• The Historical CAT Assessment Costs would include the Total CAT Costs from the date of FINRA CAT’s selection as the Plan Processor on March 29, 2019 through June 21, 2020. The total costs for this period are \$79,110,525.<sup>76</sup> The Historical CAT Assessment would be designed to recover 75% of these total costs, which is \$59,332,894.

The Historical CAT Assessment Costs also would include the certain CAT costs incurred from June 22, 2020 through July 31, 2020, which is Period 1 of the Financial Accountability Milestones, as well as the Total CAT Costs incurred from August 1, 2020 through December 31, 2020, which is Period 2 of the Financial Accountability Milestones, subject to certain

<sup>74</sup> See generally Financial Accountability Milestone Release.

<sup>75</sup> See, e.g., Securities Exchange Act Rel. No. 71596, 79 FR 11152 (Feb. 27, 2014).

<sup>76</sup> These costs do not include costs incurred in relation to the conclusion of the relationship with Thesys CAT, LLC.



exceptions.<sup>77</sup> The total costs incurred from June 22, 2020 through December 31, 2020 are \$40,004,745. The Historical CAT Assessment to be paid by the Industry Members would be designed to recover 75% of these total costs, which is \$30,003,559.

Using the Historical CAT Assessment Costs, the Operating Committee would calculate the Historical CAT Assessment owed by each Industry Member in accordance with the Proposed Funding Model. The Operating Committee proposes to seek to recover the Historical CAT Assessment Costs over a period of four calendar quarters,

commencing upon the SEC's approval of the Historical CAT Assessment. Each quarter, each Industry Member would pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic (subject to the market making discounts and the maximum fee). The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic (subject to applicable discounts for Options and Equity Market Maker message traffic and the Maximum

Industry Member CAT Fee) by \$36,238,752, which is 1/4th of the Historical CAT Assessment Costs. Each Industry Member's message traffic would be calculated using CAT Data from the prior quarter. The Operating Committee proposes to commence charging the Historical CAT Assessment in the first quarter after SEC approval of the Historical CAT Assessment, based on CAT Data from the quarter in which the SEC approved the CAT fees. The following chart summarizes the imposition of the Historical CAT Assessment:

Quarterly CAT fee	Quarterly industry member allocation	CAT data used for message traffic calculation	Payment due
Quarterly CAT Fee #1 .....	\$36,238,752	Quarter of SEC approval of Historical CAT Assessment.	1st quarter after SEC approval of Industry Member CAT Fees set forth in this Proposed Plan Amendment.
Quarterly CAT Fee #2 .....	36,238,752	1st quarter after SEC approval of Historical CAT Assessment.	2nd quarter after SEC approval of Industry Member CAT Fees set forth in this Proposed Plan Amendment.
Quarterly CAT Fee #3 .....	36,238,752	2nd quarter after SEC approval of Historical CAT Assessment.	3rd quarter after SEC approval of Industry Member CAT Fees set forth in this Proposed Plan Amendment.
Quarterly CAT Fee #4 .....	36,238,752	3rd quarter after SEC approval of Historical CAT Assessment.	4th quarter after SEC approval of Industry Member CAT Fees set forth in this Proposed Plan Amendment.

In accordance with Section 11.6(b) of the CAT NMS Plan, the Operating Committee indicates that the proposed Historical CAT Assessment seeks to recover costs that are related to Post-Amendment Expenses incurred during Period 1. Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. As indicated by the Participants' Quarterly Progress Report,<sup>78</sup> Initial Industry Member Core Equity and Option Reporting was completed on schedule by July 31, 2020. As discussed above, the Historical CAT Assessment Costs to be recovered via the Historical CAT Assessment would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020.

The Operating Committee also indicates that the proposed Historical CAT Assessment seeks to recover costs that are related to Post-Amendment Expenses incurred during Period 2. Period 2 began on August 1, 2020, and concluded on December 31, 2020, the

date of the Full Implementation of Core Equity Reporting. As indicated by the Participants' Quarterly Progress Report,<sup>79</sup> Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020. As discussed above, the Historical CAT Assessment Costs to be recovered via the Historical CAT Assessment would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020.

#### ii. Period 3 CAT Fee

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

Committee will calculate the Period 3 CAT Fee owed by each Industry Member in accordance with the Proposed Funding Model. The Operating Committee proposes to seek to recover Period 3 CAT Costs over a period of four calendar quarters, commencing in 2022.<sup>80</sup> Each quarter, each Industry Member will pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, and the Maximum Industry Member CAT Fee) by 1/4th of 75% of the Period 3 CAT Costs. Each Industry Member's message traffic would be calculated using CAT Data from the prior quarter. The Operating Committee proposes to commence charging the Period 3 CAT Fee in the second quarter of 2022, based on CAT Data from the first quarter of 2022. The following chart summarizes the imposition of the Period 3 CAT Fee:

<sup>77</sup> These costs do not include costs incurred in relation to the conclusion of the relationship with Theysys CAT, LLC.

<sup>78</sup> Q3 2020 Quarterly Progress Report (Oct. 30, 2020) (available at [www.catnmsplan.com](http://www.catnmsplan.com)).

<sup>79</sup> Q4 2020 Quarterly Progress Report (Jan. 29, 2021) (available at [www.catnmsplan.com](http://www.catnmsplan.com)).

<sup>80</sup> Because the Period 3 CAT Fee is subject to the requirements of the Financial Accountability Milestones, the Period 3 CAT Fee will be imposed

at the end of this time period. In contrast, because the Participant CAT fee for this time period is not subject to the requirements of the Financial Accountability Milestones, the Participant CAT fee for this period will be imposed prospectively.

Quarterly CAT fee	Quarterly industry member allocation	CAT data used for message traffic calculation	Payment due
Quarterly CAT Fee #1 .....	1/4th of 75% of the Period 3 CAT Costs <sup>81</sup> .	CAT Data from first quarter of 2022 .....	2nd quarter of 2022.
Quarterly CAT Fee #2 .....	1/4th of 75% of the Period 3 CAT Costs ..	CAT Data from second quarter of 2022 ...	3rd quarter of 2022.
Quarterly CAT Fee #3 .....	1/4th of 75% of the Period 3 CAT Costs ..	CAT Data from third quarter of 2022 .....	4th quarter of 2022.
Quarterly CAT Fee #4 .....	1/4th of 75% of the Period 3 CAT Costs ..	CAT Data from fourth quarter of 2022 .....	1st quarter of 2023.

To implement the Period 3 CAT Fee, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act describing the Period 3 CAT Fee. The Operating Committee will announce via a CAT alert after the end of 2021 the Total CAT Costs for 2021 to be used in calculating the quarterly Period 3 CAT Fees.<sup>82</sup> Such Total CAT Costs will be set forth in the year-end financial statements of the Consolidated Audit Trail, LLC. Such financial statements are required to be prepared in accordance Section 9.2 of the CAT NMS Plan, including requirements related to compliance with GAAP, auditing by an independent public accounting firm and making the statements publicly available.

The Operating Committee indicates that the proposed Period 3 CAT Fee seeks to recover costs that will be related to Post-Amendment Expenses incurred during Period 3. Period 3 began on January 1, 2021 and is expected to conclude on December 31, 2021, the date of Full Availability and Regulatory Utilization of Transactional Database Functionality. As discussed above, the Period 3 CAT Costs to be recovered via the Period 3 CAT Fee would include fees, costs and expenses

incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2020 through December 31, 2021. The Participants' collection of the full amount of the Period 3 CAT Fee will depend upon the achievement of Full Availability and Regulatory Utilization of Transaction Database Functionality by December 31, 2021; if not, the amount of the Period 3 CAT Fee that may be collected from the Industry Members will depend upon the fee limitations set forth in Section 11.6 of the CAT NMS Plan.

iii. Period 4 CAT Fee

The Operating Committee also determined to charge Industry Members a quarterly fee to recover the Total CAT Costs incurred from January 1, 2022 through December 31, 2022, referred to as the Period 4 CAT Fee. The Total CAT Costs incurred from January 1, 2022 through December 31, 2022 ("Period 4 CAT Costs") will be calculated at the completion of 2022. Specifically, the Period 4 CAT Costs will be the total actual costs incurred for the CAT for 2022 as set forth in the 2022 financial statements for the Company. Using the

Period 4 CAT Costs, the Operating Committee will calculate the Period 4 CAT Fee owed by each Industry Member in accordance with the Proposed Funding Model. The Operating Committee proposes to seek to recover Period 4 CAT Costs over a period of four calendar quarters, commencing in 2023.<sup>83</sup> Each quarter, each Industry Member will pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic. The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, and the Maximum Industry Member CAT Fee) by 1/4th of 75% of the Period 4 CAT Costs. Each Industry Member's message traffic would be calculated using CAT Data from the prior quarter. The Operating Committee proposes to commence charging the Period 4 CAT fee in the second quarter of 2023, based on data from the first quarter of 2023. The following chart summarizes the imposition of the Period 4 CAT Fee:

Quarterly CAT fee	Quarterly industry member allocation	CAT data used for message traffic calculation	Payment due
Quarterly CAT Fee #1 .....	1/4th of 75% of the Period 4 CAT Costs <sup>84</sup> .	CAT Data from first quarter of 2023 .....	2nd quarter of 2023.
Quarterly CAT Fee #2 .....	1/4th of 75% of the Period 4 CAT Costs ..	CAT Data from second quarter of 2023 ...	3rd quarter of 2023.
Quarterly CAT Fee #3 .....	1/4th of 75% of the Period 4 CAT Costs ..	CAT Data from third quarter of 2023 .....	4th quarter of 2023.
Quarterly CAT Fee #4 .....	1/4th of 75% of the Period 4 CAT Costs ..	CAT Data from fourth quarter of 2023 .....	1st quarter of 2024.

To implement the Period 4 CAT Fee, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act describing the method for calculating the Period 4 CAT Fee. The Operating Committee will announce via a CAT alert after the end of 2022 the Total CAT Costs for 2022 to be used in

calculating the quarterly Period 4 CAT Fees.<sup>85</sup> Such Total CAT Costs will be set forth in the year-end financial statements of the Consolidated Audit Trail, LLC. As noted above, such financial statements are required to be prepared in accordance with the

requirements set forth in Section 9.2 of the CAT NMS Plan.

The Operating Committee indicates that the proposed Period 4 CAT Fee seeks to recover costs that will be related to Post-Amendment Expenses incurred during Period 4. Period 4 is expected to begin on January 1, 2022

<sup>81</sup> The Period 3 CAT Costs will be the total actual costs incurred for the CAT for 2021 as set forth in the 2021 financial statements for the Company.

<sup>82</sup> The Participants intend to file a fee filing under Section 19(b) of the Exchange Act describing the calculation method for the Period 3 CAT Fee, and then announce via CAT alert the Total CAT Costs to be used in calculating the CAT fees via the method described in the fee filing. The Participants do not intend to file a separate fee filing setting

forth the Total CAT Costs relevant for the Period 3 CAT Fee.

<sup>83</sup> Because the Period 4 CAT Fee is subject to the requirements of the Financial Accountability Milestones, the Period 4 CAT Fee will be imposed at the end of this time period. In contrast, because the Participant CAT Fee for this time period is not subject to the requirements of the Financial Accountability Milestones, the Participant CAT Fee for this period will be imposed prospectively.

<sup>84</sup> The Period 4 CAT Costs will be the total actual costs incurred for the CAT for 2022 as set forth in the 2022 financial statements for the Company.

<sup>85</sup> The Participants intend to file one fee filing under Section 19(b) of the Exchange describing the calculation method for the Period 4 CAT Fee, and announce via CAT alert the Total CAT Costs to be used in calculating the CAT fees via the method described in the fee filing. The Participants do not intend to file a separate fee filing setting forth the Total CAT Costs relevant for the Period 4 CAT Fee.

and conclude on December 31, 2022, the date of Full Implementation of CAT NMS Plan Requirements. As discussed above, the Period 4 CAT Costs to be recovered via the Period 4 CAT Fee would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2022 through December 31, 2022. The Participants' collection of the full amount of the Period 4 CAT Fee will depend upon the achievement of Full Implementation of CAT NMS Plan Requirements by December 31, 2022; if not, the amount of the Period 4 CAT Fee that may be collected from the Industry Members will depend upon the fee limitations set forth in Section 11.6 of the CAT NMS Plan.

iv. Quarterly CAT Fee—Beginning 2023

To recover the costs of the CAT going forward beginning in 2023, the Operating Committee determined to charge Industry Members an ongoing quarterly CAT fee calculated based on the allocation of Total CAT Costs pursuant to the Proposed Funding Model ("Quarterly CAT Fee"). The Operating Committee will use the costs set forth in the annual operating budget as the Total CAT Costs in the

calculation of the Quarterly CAT Fee. Specifically, the Total CAT Costs budgeted for the upcoming year will be the costs set forth in the annual operating budget for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. As discussed above with regard to the Participant CAT fee, CAT costs would include, but not be limited to, Plan Processor costs, insurance costs, third-party support costs and an operational reserve.<sup>86</sup> As required by Section 11.1(c) of the CAT NMS Plan, any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>87</sup> In addition, to address potential changes in the budget during the year, the total budgeted costs for the CAT for the relevant year may be adjusted on a quarterly basis as the Operating Committee reasonably deems appropriate for the prudent operation of the Company. To the extent that the Operating Committee adjusts the total budgeted costs for the CAT for the relevant year during its quarterly budget review, the adjusted total budgeted costs for the CAT will be used in calculating the remaining quarterly CAT fees for that year. Using these budgeted Total CAT Costs, the Operating Committee

will calculate the Quarterly CAT Fee owed by each Industry Member in accordance with the Proposed Funding Model.

The Operating Committee proposes to seek to recover the budgeted Total CAT Costs over the course of the year. Each quarter, each Industry Member will pay the greater of the minimum fee of \$125 or the Industry Member's fee calculated based on message traffic.<sup>88</sup> The message traffic fee would be calculated by multiplying the percentage of the Industry Member's message traffic of the total Industry Member message traffic (subject to applicable discounts for Options Market Maker message traffic and Equity Market Maker message traffic, and the Maximum Industry Member CAT Fee) by 1/4th of 75% of the budgeted Total CAT Costs for the year. Each Industry Member's message traffic would be calculated using data from the prior calendar quarter. The Operating Committee proposes to commence charging this CAT fee in the second quarter of 2023, based on CAT Data from the first quarter of 2023. The following chart summarizes the imposition of the Quarterly CAT Fee for Industry Members each year commencing in 2023 and continuing each year thereafter:

Quarterly CAT fee	Quarterly industry member allocation	CAT data used for message traffic calculation	Payment due
Quarterly CAT Fee #1 .....	1/4th of 75% of the budgeted annual CAT costs for the relevant year.	CAT Data from first quarter of the relevant year.	2nd quarter of the relevant year.
Quarterly CAT Fee #2 .....	1/4th of 75% of the budgeted annual CAT costs for the relevant year.	CAT Data from second quarter of the relevant year.	3rd quarter of the relevant year.
Quarterly CAT Fee #3 .....	1/4th of 75% of the budgeted annual CAT costs for the relevant year.	CAT Data from third quarter of the relevant year.	4th quarter of the relevant year.
Quarterly CAT Fee #4 .....	1/4th of 75% of the budgeted annual CAT costs for the relevant year.	CAT Data from fourth quarter of the relevant year.	1st quarter of year following the relevant year.

To implement the Quarterly CAT Fee, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act describing the method for calculating the Quarterly CAT Fee. The Operating Committee will announce at the beginning of the relevant year via a CAT alert the budgeted Total CAT Costs to be used in calculating the Quarterly CAT Fees for that year.<sup>89</sup> The budgeted

Total CAT Costs will be the costs set forth in the annual operating budget for the Company required pursuant to Section 11.1(a) of the CAT NMS Plan. Section 11.1(a) states that "[o]n an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and

operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company." To the extent that the Operating Committee adjusts the budgeted Total CAT Costs for the year during its quarterly budget review, the

<sup>86</sup> As set forth in Section 11.1(a) of the CAT NMS Plan, the Operating Committee may include in the budget "the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company." Although the Operating Committee may determine at its discretion that a different level of reserves is appropriate in the future, the Operating Committee proposes to include in the budget an operational reserve comprised of three months of ongoing CAT costs, such as Plan Processor costs, third party support costs and insurance costs.

<sup>87</sup> CAT NMS Plan Approval Order at 84792.

<sup>88</sup> To the extent that any two or more of the four categories of Industry Member CAT fees (*i.e.*, the Historical CAT Assessment, Period 3 CAT Fee, Period 4 CAT Fee and the Quarterly CAT Fee) are due during the same quarter, any Industry Member obligated to pay one or more categories of fees is required to pay each category of fee for that quarter. For example, if an Industry Member would be subject to the Minimum Industry Member CAT Fee for the Period 4 CAT Fee and the Minimum Industry Member CAT Fee for Quarterly CAT Fee during the same quarter, the Industry Member would be required to pay two minimum \$125 fee that quarter for a total of \$250. As another example, suppose that an Industry Member owed a CAT fee

(other than the minimum fee of \$125) for both the Historical CAT Assessment and the Period 3 CAT Fee, the Industry Member would be required to pay both fees that quarter.

<sup>89</sup> The Participants intend to file one fee filing under Section 19(b) of the Exchange Act describing the calculation method for the Quarterly CAT Fee, and then announce via CAT alert the budgeted Total CAT Costs to be used in calculating the CAT fees each year via the method described in the fee filing. The Participants do not intend to file a separate fee filing each year setting forth the budgeted Total CAT Costs relevant for the Quarterly CAT Fee.

Operating Committee will announce any such quarterly budget adjustments to be used in calculating the remaining Quarterly CAT Fees for that year via a CAT alert.

#### 6. Collection of Fees

Pursuant to Section 11.4 of the CAT NMS Plan, the Operating Committee proposes to establish a system for the collection of CAT fees. The Consolidated Audit Trail, LLC will provide each Participant with an invoice setting forth the Participants' quarterly CAT fee for each payment period. Each Participant will pay its CAT fees to the Consolidated Audit Trail, LLC via the centralized system for the collection of CAT fees established by the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC. As set forth in Section 11.4 of the CAT NMS Plan, each Participant shall pay all its CAT fees authorized under the CAT NMS Plan as required by Section 3.7(b) of the CAT NMS Plan.

The Operating Committee also determined the time and manner in which Industry Member CAT fees will be paid. The Operating Committee determined that the Consolidated Audit Trail, LLC will provide each Industry Member with an invoice setting forth the Industry Member's Historical CAT Assessment, Period 3 CAT Fee, Period 4 CAT Fee and/or Quarterly CAT Fee (as applicable) for each payment period. Consolidated Audit Trail, LLC will provide each Industry Member with one invoice each payment period for its CAT fees, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Each Industry Member will pay its CAT fees to the Consolidated Audit Trail, LLC via the centralized system for the collection of CAT fees established by the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC. Finally, as set forth in Section 11.4 of the CAT NMS Plan, Industry Members would be required to pay their CAT fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.<sup>90</sup> To implement the

<sup>90</sup> CAT Reporters will be responsible for each quarterly fee in which they are a CAT Reporter. If

requirements related to the timing and manner of payment of the CAT fees for Industry Members, each Participant would submit a fee filing pursuant to Section 19(b) of the Exchange Act describing such requirements as discussed above.

#### 7. Example of Application of Proposed Funding Model

The Operating Committee has prepared an example of how the Proposed Funding Model would operate for illustrative purposes only. Specifically, the Operating Committee has prepared an example of CAT fees calculated under the Proposed Funding Model based on budgeted Total CAT Costs for 2021 as well as message traffic and market share data for the fourth quarter of 2020. Set forth in *Exhibit B* to this letter are three charts setting forth illustrative CAT fees for each Equities Participant, Options Participant and Industry Member CAT Reporter. Note *Exhibit B* only provides an illustrative example of how the Proposed Funding Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid 100% of these costs up to the time of the SEC approval of the Proposed Funding Model, and, as a result, Participants would not be obligated to pay CAT fees related to 2021 CAT costs to the extent the Participants have already paid such costs. Furthermore, Period 3 CAT Fees for Industry Members will be calculated based on actual Total CAT Costs for 2021, not budgeted CAT Costs for 2021, and based on CAT Data from 2022, not from 2020.

#### 8. Satisfaction of Exchange Act and CAT NMS Plan Requirements

The Operating Committee believes that the Proposed Funding Model offers a variety of benefits and satisfies the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein, as well as the applicable requirements of the Exchange Act.

##### a. Funding Principle: Section 11.2(a) of the CAT NMS Plan

The Participants believe that the Proposed Funding Model satisfies the funding principles set forth in Section 11.2(a) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(a) requires the Operating

a CAT Reporter ceases to meet the definition of a CAT Reporter during a quarter, the CAT Reporter will still be responsible for CAT fees attributable to its message traffic (or, the minimum fee in the alternative) during that quarter.

Committee, in establishing the funding of the Company, to seek "to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company."

First, by adopting a CAT-specific fee tied to Total CAT Costs, the Operating Committee will be fully transparent regarding the costs of the CAT and how those costs will be allocated among CAT Reporters. In contrast, charging a general regulatory fee, which might otherwise be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT-related costs only.

Second, the Proposed Funding Model would provide a predictable revenue stream for the Company. The Proposed Funding Model provides for a predictable revenue stream as the Proposed Funding Model is designed to divide the Total CAT Costs among the CAT Reporters. In addition, to address the possibility of some variability in the collected CAT fees or an unexpected increase in costs, the Total CAT Costs covered by the Proposed Funding Model include an operational reserve. The operational reserve could be used in the event that the total fees are not collected from the CAT Reporters, or costs increase due to outside events.

Third, the Proposed Funding Model provides for a revenue stream for the Company that is aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company. The total fees to be collected from Participants and Industry Members are designed to cover the Total CAT Costs. Any surpluses collected will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>91</sup>

##### b. Funding Principle: Section 11.2(b) of the CAT NMS Plan

The Operating Committee also believes that the Proposed Funding Model satisfies the funding principle set forth in Section 11.2(b) of the CAT NMS Plan, which requires the Operating Committee to seek "to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations." As

<sup>91</sup> CAT NMS Plan Approval Order at 84792.

discussed above, the Proposed Funding Model allocation between Participants and Industry Members takes into account the timeline for implementation, as the Company has been incurring CAT costs with the development and implementation of the CAT, and Participants and certain Industry Members have been reporting to the CAT.

The Proposed Funding Model also recognizes the “distinctions in the securities trading operations of Participants and Industry Members” in various ways. In light of their different roles, Participants will pay a fee based on market share and Industry Members will pay a fee based on message traffic, as approved by the Commission in the CAT NMS Plan. The Proposed Funding Model also recognizes the different trading characteristics of the equities and options markets by allocating the Adjusted Participant Allocation to Equities Participants and Options Participants separately. Furthermore, the Operating Committee proposes to discount Options Market Maker message traffic and Equity Market Maker message traffic in recognition of their distinct roles as liquidity providers in the securities markets and to avoid potentially and inadvertently affecting market quality. The Proposed Funding Model also recognizes the different trading characteristics of OTC Equity Securities by not including them in the market share calculation for Participants. The Proposed Funding Model also is designed to take into account Participants and Industry Members’ relative impact upon Company resources and operations through the use of message traffic and market share in calculating CAT fees.

c. Funding Principle: Section 11.2(c) of the CAT NMS Plan

The Operating Committee also believes that the Proposed Funding Model satisfies the funding principle set forth in Section 11.2(c) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(c), as proposed to be modified herein, requires the Operating Committee to seek “to establish a fee structure in which the fees charged to: (i) Participants are based upon the level of market share; and (ii) Industry Members are based upon message traffic.” The Proposed Funding Model requires Participants to pay a fee based on market share, and Industry Members to pay a fee based on message traffic.

d. Funding Principle: Section 11.2(d) of the CAT NMS Plan

The Operating Committee also believes that the Proposed Funding

Model satisfies the funding principle set forth in Section 11.2(d) of the CAT NMS Plan, which requires the Operating Committee to seek “to provide for ease of billing and other administrative functions.” The Operating Committee believes that calculating CAT fees under the Proposed Funding Model will be manageable as the message traffic and market share data will be readily available. In addition, the elimination of tiers simplifies the billing process as it removes the subjective determination of the tier levels. In addition, the Operating Committee proposes a Minimum Industry Member CAT Fee to ease the administrative burden associated with very small payments.

e. Funding Principle: Section 11.2(e) of the CAT NMS Plan

The Operating Committee also believes that the Proposed Funding Model satisfies the funding principle set forth in Section 11.2(e) of the CAT NMS Plan, which requires the Operating Committee to seek “to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.” As discussed above, the Operating Committee has proposed various measures to address potential disincentives, including the market maker message traffic discounts, the Maximum Industry Member CAT Fee, the Maximum Equities Participant Fee and the treatment of OTC Equity Securities for the market share calculation for Participants. The Proposed Funding Model also is structured to avoid a reduction in market quality because it discounts Options Market Maker message traffic and Equity Market Maker message traffic when calculating message traffic for Options Market Makers and Equity Market Makers, respectively. The proposed discounts recognize the value of the market making activity to the market as a whole.

f. Funding Principle: Section 11.2(f) of the CAT NMS Plan

The Operating Committee also believes that the Proposed Funding Model satisfies the funding principle set forth in Section 11.2(f) of the CAT NMS Plan, which requires the Operating Committee to seek “to build financial stability to support the Company as a going concern.” The Operating Committee believes that the Proposed Funding Model is structured to collect sufficient funds to pay the Total CAT Costs. In addition, the Proposed Funding Model would collect an operational reserve for the CAT. This operational reserve is intended to

address potential shortfalls in collected CAT fees versus actual CAT costs.

g. Section 11.1(c) of the CAT NMS Plan

The Operating Committee also believes that the Proposed Funding Model would satisfy the requirements in Section 11.1(c) of the CAT NMS Plan. Section 11.1(c) of the CAT NMS Plan states that “[t]o fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs.” The Company has been and continues to incur development and implementation costs for the CAT, and the Operating Committee intends for the fees to help cover these costs. In addition, the CAT fees going forward are proposed to be imposed close in time to when costs are incurred.

Section 11.1(c) of the CAT NMS Plan also requires that “[a]ny surplus of the Company’s resources over its expenses shall be treated as an operational reserve to offset future fees.” The Company will operate on a “break-even” basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.<sup>92</sup> To ensure that the Participants’ operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that “[a]ny surplus of the Company’s revenues over its expenses shall be treated as an operational reserve to offset future fees.” In addition, as set forth in Article VIII of the CAT NMS Plan, the Company “intends to operate in a manner such that it qualifies as a ‘business league’ within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.” To qualify as a business league, an organization must “not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.”<sup>93</sup> As the SEC stated when approving the CAT NMS Plan, “the Commission believes that the Company’s application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan’s proposed allocation of profit and loss by mitigating concerns that the Company’s earnings could be used to benefit individual

<sup>92</sup> CAT NMS Plan Approval Order at 84792.

<sup>93</sup> 26 U.S.C. 501(c)(6).

Participants.”<sup>94</sup> The Internal Revenue Service has determined that the Company is exempt from federal income tax under Section 501(c)(6) of the Internal Revenue Code.

#### h. Equitable Allocation of Reasonable Fees

The Operating Committee believes that the proposed CAT fees provide for the “equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities necessary or appropriate in furtherance of the purposes of this chapter,”<sup>95</sup> as required by the Exchange Act. The Operating Committee believes that the CAT fees equitably allocate CAT costs between and among Participants and Industry Members, as discussed in detailed above. For the reasons discussed above, the Operating Committee believes that the allocation percentages in the Proposed Funding Model as well as the use of message traffic for allocating costs among Industry Members and the use of market share for allocating costs among Participants provide for an equitable allocation of CAT costs among CAT Reporters. In addition, as discussed above, the Operating Committee believes that the imposition of minimum and maximum fees and market maker discounts as well as the treatment of OTC Equity Securities for the market share calculation for Participants would operate to provide for an equitable allocation of CAT costs among CAT Reporters.

#### i. No Unfair Discrimination

The Operating Committee believes that the Proposed Funding Model is “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,”<sup>96</sup> as required by the Exchange Act. In addition, the Proposed Funding Model does not unfairly discriminate between Industry Members and Participants, among Industry Members or among Participants. All Industry Members are grouped together for the purpose of determining CAT fees, and all Participants are grouped together for the purpose of determining CAT fees. CAT Reporters with similar levels of activity will pay similar fees. For example, Industry Members with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Participants with larger market share

will pay higher fees, and those with lower levels of market share will pay lower fees. With the elimination of tiers, fees for Industry Members and Participants are directly related to their message traffic and market share, respectively. With tiers, the relationship between message traffic or market share and the CAT fee would not have been as direct.

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

The Operating Committee also has proposed the Maximum Equities Participant Fee to address the potential for higher market share for FINRA due to the trade reporting to FINRA. The Maximum Equities Participant Fee serves as a method to institute a cap on fees to fairly allocate costs to FINRA given that a market share approach may result in FINRA having a significant allocation given the large volume of NMS Stock activity that is subject to trade reporting to FINRA.

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

The Operating Committee also proposes to calculate market share for national securities associations without reference to trades reported in OTC Equity Securities in light of the differences in the markets for NMS Stocks and OTC Equity Securities. Because the proposed CAT fees for Equities Participants are based on market share calculated by share volume, FINRA would likely be subject to higher fees if OTC Equity Securities were included in the calculation of market share.

#### j. No Burden on Competition

The Operating Committee believes that the Proposed Funding Model does “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter,”<sup>97</sup> as required by the Exchange Act. Moreover, the Operating Committee believes that the proposed fee schedule fairly and equitably allocates costs among CAT Reporters. In particular, as described above, the cost allocation between Participants and Industry Members recognizes the greater number of Industry Members as compared to the Participants and the greater collective revenue of Industry Members as compared to Participants. In addition, cost allocations among Industry Members based on message traffic and cost allocations among Participants based on market share fairly and equitably distributes CAT costs. Furthermore, the market maker discounts, Maximum Industry Member CAT Fee and Maximum Equities Participant Fee address the potential for burdens on market makers, Industry Members with outsized message traffic and FINRA potentially resulting from the proposed fee calculations. Moreover, the Operating Committee does not believe that the Minimum Industry Member CAT Fee or the Minimum Participant Fee would act as barriers to entry for smaller CAT Reporters.

#### 9. Alternative Models Considered

The Operating Committee has determined to propose the Proposed Funding Model to fund the CAT for the reasons discussed above. In reaching this conclusion, the Operating Committee considered the advantages and disadvantages of a variety of possible alternative funding and cost allocations models for the CAT in detail. After analyzing the various alternatives, the Operating Committee determined that the Proposed Funding Model provides a variety of advantages in comparison to the alternatives. In addition, although various funding models may be appropriate, the Proposed Funding Model provides for an equitable allocation of reasonable fees among CAT Reporters.

The Operating Committee previously filed a fee proposal in line with the CAT NMS Plan—the Prior Fee Proposal. Under that model, the Operating Committee, among other things, proposed a 75%–25% allocation between Execution Venues (which included Participants and Execution Venue ATSS) and Industry Members

<sup>94</sup> CAT NMS Plan Approval Order at 84793.

<sup>95</sup> Sections 6(b)(4) and 15A(b)(5) of the Exchange Act.

<sup>96</sup> Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

<sup>97</sup> Sections 6(b)(8) and 15A(b)(9) of the Exchange Act.

(other than Execution Venue ATSS), and required Execution Venues to pay fees based on market share, and Industry Members (other than Execution Venue ATSS) to pay fees based on message traffic. This Prior Fee Proposal was a very complex model with many interrelated parts, including allocation percentages, discounts for certain market behavior, and multiple tiered fees, and the complexity raised concerns from the Commission regarding its use as the CAT funding model. In addition, in response to the proposal, the industry raised a number of other issues related to the proposal, including issues regarding the proposed allocation of CAT costs between Participants and Industry Members, and the ability of certain market segments to afford the proposed CAT fee.<sup>98</sup> Accordingly, the Operating Committee determined to revise various aspects of the Prior Fee Proposal, thereby developing the Proposed Funding Model.

In developing the Prior Fee Proposal, the Operating Committee considered many variations of different aspects of that model. For example, the Operating Committee evaluated different cost allocations between Industry Members (other than Execution Venue ATSS) and Execution Venues, including 80%–20%, 75%–25%, 70%–30% and 65%–35% allocations, and different cost allocations between Equity and Options Execution Venues.<sup>99</sup> The Operating Committee also considered different discounts for equities and options market makers, different numbers of tiers of Industry Members and Execution Venues, different fee levels for each tier, and other aspects of the model.

Furthermore, the Operating Committee considered a model in which all CAT Reporters, including both Industry Members and Participants, would pay based solely on revenue. The concept underlying this proposal is that CAT costs would be borne by CAT Reporters based on the ability to pay. Industry Member revenue would be calculated based on revenue reported in FOCUS reports, and Participant revenue would have been calculated based on revenue information in Form 1 amendments and other publicly reported figures. The Operating Committee did not select this model for various reasons. As discussed above, under this approach, Participants as a group would only pay approximately 4% of the total CAT costs. Given their

role as self-regulatory organizations and their use of the CAT, the Operating Committee did not believe that such a small allocation of the CAT costs to the Participants was appropriate. Using revenue also raised a variety of practical issues. For example, questions were raised as to what revenue was appropriate to include in the calculation of revenue for Industry Members. The gross revenue set forth on FOCUS reports was proposed, as it was similar to an existing FINRA regulatory fee.<sup>100</sup> However, questions were raised as to whether revenue unrelated to NMS Securities or OTC Equity Securities, or otherwise unrelated to the CAT, should be included for calculation of the CAT fee. Eliminating revenue unrelated to CAT-related activity would have been difficult or impossible. In addition, the lack of a uniform approach to calculating revenue for the Participants could raise inequities in the imposition of a CAT fee.

To address the issues regarding the 96%–4% allocation and the calculation of the Participant revenue in the straight revenue model described above, the Operating Committee considered an alternative version of the revenue model in which the CAT costs would be allocated between Industry Members and Participants based on a set percentage (e.g., 75%–25%) and the Industry Member allocation would be allocated among Industry Members based on revenue and the Participant allocation would be allocated among Participants based on market share. However, this alternative revenue model failed to address the issues regarding the appropriate revenue calculations for Industry Members.

The Operating Committee considered a funding model in which CAT costs were allocated across all CAT Reporters—both Industry Members and Participants—based on message traffic. Specifically, the Operating Committee considered eliminating the concepts of the Participant Allocation and the Industry Member Allocation entirely, and treating Participants and Industry Members the same under the model. The Operating Committee, however, determined that the bifurcated approach set forth in the CAT NMS Plan continued to be a fair and reasonable approach.

The Operating Committee also considered other possible funding models. For example, the Participants considered allocating the CAT costs equally among each of the Participants,

and then permitting each Participant to charge its own members as it deems appropriate. The Operating Committee determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. The Operating Committee also discussed the advantages and disadvantages of various alternative models during development of the CAT NMS Plan, such as a cost allocation based on a strict pro-rata distribution, regardless of the type or size of the CAT Reporters, or a cost allocation based on trades.<sup>101</sup> The Operating Committee believes that the Proposed Funding Model provides advantages over each of these previously considered models and provides an equitable allocation of reasonable fees among CAT Reporters.

#### *B. Governing or Constituent Documents*

Not applicable.

#### *C. Implementation of Amendment*

The Participants are filing this proposed amendment pursuant to Rule 608(b)(1) of Regulation NMS under the Exchange Act.<sup>102</sup>

#### *D. Development and Implementation Phases*

The Participants expect to implement the proposed Participant CAT fees upon approval by the SEC.

#### *E. Analysis of Impact on Competition*

The Operating Committee does not believe that the proposed amendment will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Operating Committee notes that the proposed amendment implements provisions of the CAT NMS Plan approved by the Commission, subject to proposed revisions to the CAT NMS Plan described above, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. Because all Participants are subject to the Proposed Funding Model set forth in the proposed amendment, this is not a competitive filing that raises competition issues between and among the Participants. Furthermore, for the reasons discussed above, including in Section A.8 above, the Operating Committee does not believe that the Proposed Funding Model will result in any burden on competition that

<sup>98</sup> For a discussion of comments made regarding the Original Funding Model and the Prior Fee Proposal, see generally Prior Fee Proposal Release.

<sup>99</sup> See Prior Fee Proposal Release at 1408.

<sup>100</sup> See paragraph (c) and (d) of Section 1 of Schedule A of FINRA's Bylaws regarding FINRA's annual Gross Income Assessment.

<sup>101</sup> For a discussion of alternatives considered in the drafting of the CAT NMS Plan, see Appendix C of the CAT NMS Plan at C-88—C-89.

<sup>102</sup> 17 CFR 242.608(b)(1).



is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

*F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan*

Not applicable.

*G. Approval by Plan Sponsors in Accordance With Plan*

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, Section 4.3(a)(vi) of the Plan requires the Operating Committee, by Majority Vote, to authorize action to determine the appropriate funding-related policies, procedures and practices-consistent with Article XI. The Operating Committee has satisfied both of these requirements. In addition, the Proposed Funding Model was discussed and voted on during a general session of the Operating Committee.

*H. Description of Operation of Facility Contemplated by the Proposed Amendment*

Not applicable.

*I. Terms and Conditions of Access*

Not applicable.

*I. Method of Determination and Imposition, and Amount of, Fees and Charges*

Section A of this letter describes in detail how the Participants developed the Proposed Funding Model for the CAT.

*J. Method and Frequency of Processor Evaluation*

Not applicable.

*K. Dispute Resolution*

Section 11.5 of the CAT NMS Plan addresses the resolution of disputes regarding CAT fees charged to Participants and Industry Members. Specifically, Section 11.5 of the CAT NMS Plan states that disputes with respect to fees the Company charges Participants pursuant to Article XI of the CAT NMS Plan shall be determined by the Operating Committee or a Subcommittee designated by the Operating Committee. Decisions by the Operating Committee or such

designated Subcommittee on such matters shall be binding on Participants, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum. In addition, the Participants adopted rules to establish the procedures for resolving potential disputes related to CAT fees charged to Industry Members.<sup>103</sup>

**III. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4–698 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number 4–698. This file number should be included on the subject line if 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 (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the Participants' offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from

<sup>103</sup> See Securities Exchange Act Rel. No. 81500 (Aug. 30, 2017), 82 FR 42143 (Sept. 6, 2017).

comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–698 and should be submitted on or before May 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>104</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

**Exhibit A**

Additions *italicized*; deletions [bracketed]

\* \* \* \* \*

**Article I**

**Definitions**

\* \* \* \* \*

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

\* \* \* \* \*

**Article XI**

**Funding of the Company**

Section 11.1. Funding Authority.  
(a) On an annual basis the Operating Committee shall approve an operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(b) Subject to Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) Establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as "Consolidated Audit Trail Funding Fees."

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs.

<sup>104</sup> 17 CFR 200.30–3(a)(85).

In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.

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

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

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

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

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

Execution Venues and/or Industry Members)].

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

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

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

Section 11.3. Recovery.

(a) The Operating Committee will establish a *minimum fee to be payable by each Participant in addition to [fixed] fees based on market share* to be payable by *Participants* [Execution Venues] as provided in this Section 11.3(a):

(i) Each *Participant* [Execution Venue] that: (A) Executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks [or OTC Equity Securities] will pay a [fixed] fee depending on the market share of that *Participant* [Execution Venue] in NMS Stocks ("*Equities Participant*") [and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share]. For these purposes, market share for *Participants* [Execution Venues] that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks [or OTC Equity Securities] will be calculated based on share volume of trades reported, provided, however, that *any Participant that is a national securities association shall pay a maximum fee established by the Operating Committee instead of the higher fee calculated based on such Participant's market share. If a Participant's fee is limited to such maximum fee, any excess amount which the Participant otherwise would have paid as a fee above such maximum fee will be re-allocated among all Equities Participants, including any Equities Participant that is subject to the maximum fee, in accordance with their market share* [the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share].

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

(b) The Operating Committee will establish [fixed] fees to be payable by Industry Members, based on the message traffic generated by such Industry Member *subject to a base minimum fee and discounts for market maker message traffic* [, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.], *provided, however, that any Industry Member shall pay a maximum fee established by the Operating Committee instead of the higher fee calculated based on such Industry Member's message traffic. If an Industry Member's fee is limited to such maximum fee, any excess amount which the Industry Member otherwise would have paid as a fee above such maximum fee will be re-allocated among all Industry Members, including any Industry Member that is subject to the maximum fee or subject to the base minimum fee, in accordance with their message traffic.*

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

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but

shall not make any changes on more than a semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

\* \* \* \* \*

**Appendix B**

**Fee Schedule**

**Consolidated Audit Trail Funding Fees**

(a) Each Participant shall pay to Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC a CAT fee calculated as follows:

(1) Commencing upon SEC approval of the CAT fee, each Participant shall pay a quarterly CAT fee calculated based on market share from the prior quarter by adding the sum of the following:

(A) For all Participants, the Minimum Participant Fee;

(B) For Equities Participants, the lesser of:

(i) The product of multiplying the Equities Participant's percentage of total market share of NMS Stocks for all Equities Participants against the Equities Participant Allocation; or

(ii) the Maximum Equities Participant Fee, if applicable; and

If any Participant's fee is limited to the Maximum Equities Participant Fee, any excess amount which such Participant otherwise would have paid as a fee above such Maximum Equities Participant Fee will be re-allocated among all Equities Participants (including any Equities Participant subject to the Maximum Equities Participant Fee) in accordance with their market share.

(C) For Options Participants, the product of multiplying the Participant's percentage of total market share of Listed Options contracts for all Options Participants against the Options Participant Allocation;

For the avoidance of doubt, Participants with both options and equities market share shall be considered both Equities Participants and Options Participants.

(b) The CAT fees set forth in paragraph (a) will be calculated based on the following:

(1) Industry Member/Participant Allocation. The Industry Member Allocation for each quarter shall be 75% of 1/4th of the Total CAT Costs for the relevant year. The Participant Allocation for each quarter shall be 25% of 1/4th of the Total CAT Costs for the relevant year.

(2) Minimum Participant Fee. The Minimum Participant Fee is 0.75% of

the Participant Allocation. For avoidance of doubt, the Minimum Participant Fee will be paid by each registered national securities exchange that is a Participant and each registered national securities association that is a Participant.

(3) Adjusted Participant Allocation. The Adjusted Participant Allocation is the Participant Allocation minus the sum of all Minimum Participant Fees required to be paid by each Participant.

(4) Equities Participant Allocation. The Equities Participant Allocation is 60% of the Adjusted Participant Allocation.

(5) Options Participant Allocations. The Options Participant Allocation is 40% of the Adjusted Participant Allocation.

(6) Maximum Equities Participant Fee. The Maximum Equities Participant Fee is the greater of (x) 20% of the Equities Participant Allocation or (y) the highest CAT fee required to be paid by any other Equities Participant plus 5% of such highest CAT fee. The Maximum Equities Participant Fee only applies to a Participant that is a national securities association.

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

\* \* \* \* \*

**Exhibit B**

The following sets forth an illustrative example of CAT fees calculated under the Proposed Funding Model based on budgeted Total CAT Costs for 2021 and message traffic and market share data for the fourth quarter of 2020. Note Exhibit B only provides an illustrative example of how the Proposed Funding Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid 100% of these costs up to the time of the SEC approval of the Proposed Funding Model, and, as a result, Participants

would not be obligated to pay CAT fees related to 2021 CAT costs to the extent the Participants have already paid such costs. Furthermore, Period 3 CAT Fees for Industry Members will be calculated based on actual Total CAT Costs for 2021, not budgeted CAT Costs for 2021, and based on CAT Data from 2022, not from 2020.

**CAT Fee Example for Illustrative Purposes Only**

Budgeted Total CAT Costs for 2021: \$132,522,082  
Budgeted Quarterly Total CAT Costs: \$33,130,502.50

**Quarterly Participant CAT Fees**

Participant Allocation (25% of Total CAT Costs): \$8,282,625.62  
Minimum Participant Fee (0.75% of Participant Allocation): \$62,119.73  
Equities Participant Allocation (60% of Adjusted Participant Allocation with Minimum Participant Fee): \$4,845,413.60  
Options Participant Allocation (40% of Adjusted Participant Allocation with Minimum Participant Fee): \$3,437,291.50  
Maximum Equities Participant Fee (with Minimum Participant Fee): \$904,261.77

**EQUITIES PARTICIPANTS**

Equities participant	% of total market share	Quarterly CAT fee <sup>105</sup>
1	44.036	\$1,316,397.13
2	15.857	819,716.78
3	10.311	574,962.49
4	8.465	452,089.70
5	7.276	392,929.38
6	4.823	270,943.47
7	2.404	181,695.58
8	1.572	140,305.36
9	1.439	133,707.03
10	1.105	117,096.53
11	0.732	67,479.86
12	0.658	63,773.04
13	0.562	90,079.89
14	0.464	54,132.27
15	0.244	74,252.16
16	0.052	33,652.74
17	0.000	62,125.23

**OPTIONS PARTICIPANTS**

Options participant	% of total market share	Quarterly CAT fee <sup>106</sup>
1	15.832	\$488,295.85
2	12.919	378,833.92
3	9.424	284,742.41
4	8.742	266,385.07
5	8.640	263,642.40
6	8.586	262,187.01
7	7.327	259,360.77

<sup>105</sup> These fees reflect the Minimum Participant Fee, the Maximum Equities Participant Fee and the re-allocation related to the Maximum Equities Participant Fee.

OPTIONS PARTICIPANTS—Continued

OPTIONS PARTICIPANTS—Continued			Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>
Options participant	% of total market share	Quarterly CAT fee <sup>106</sup>						
8	6.048	224,933.08	53	0.084735	23,713.00	135	0.0018979	531.14
9	3.147	115,761.83	54	0.081	22,774.83	136	0.001826	510.99
10	4.246	176,402.53	55	0.0759906	21,265.93	137	0.0018040	504.85
11	3.873	135,311.97	56	0.0738346	20,662.59	138	0.0017908	501.14
12	3.267	150,063.18	57	0.066684	18,661.49	139	0.001777	497.38
13	3.304	151,047.18	58	0.065941	18,453.43	140	0.0017672	494.54
14	3.404	153,759.91	59	0.063723	17,832.74	141	0.0015795	442.02
15	1.020	89,566.40	60	0.05392	15,090.39	142	0.0014790	413.90
16	0.221	36,997.99	61	0.0483078	13,518.91	143	0.00	411.74
			62	0.043817	12,262.25	144	0.0014253	398.86
			63	0.0384240	10,752.94	145	0.0014101	394.62
			64	0.0370	10,361.23	146	0.001353	378.77
			65	0.031046	8,688.22	147	0.0013274	371.48
			66	0.029490	8,252.77	148	0.0013061	365.52
			67	0.03	8,112.33	149	0.0013	359.89
			68	0.0269	7,514.14	150	0.0012558	351.44
			69	0.02450	6,855.05	151	0.0012482	349.31
			70	0.02444676	6,841.42	152	0.001206	337.46
			71	0.02095646	5,864.66	153	0.0011434	319.97
			72	0.0191560	5,360.79	154	0.0011142	311.81
			73	0.0175190	4,902.68	155	0.0011093	310.45
			74	0.0164131	4,593.20	156	0.001090	305.14
			75	0.015561	4,354.73	157	0.00108	301.72
			76	0.0148	4,140.50	158	0.001	299.87
			77	0.014	3,978.17	159	0.001	294.94
			78	0.01402	3,924.60	160	0.001	292.03
			79	0.0136249	3,812.92	161	0.0010354	289.75
			80	0.01284773	3,595.43	162	0.0010202	285.52
			81	0.0127	3,544.27	163	0.000943	263.95
			82	0.011465	3,208.47	164	0.001	257.53
			83	0.0112806	3,156.88	165	0.000860	240.72
			84	0.0108896	3,047.45	166	0.0008519	238.39
			85	0.010741	3,005.74	167	0.0008308	232.51
			86	0.01029	2,879.17	168	0.0008213	229.84
			87	0.010275	2,875.50	169	0.0006737	188.53
			88	0.0092574	2,590.67	170	0.00067	187.07
			89	0.008569	2,398.10	171	0.0006423	179.74
			90	0.0085212	2,384.65	172	0.00	178.92
			91	0.01	2,347.27	173	0.00063	176.72
			92	0.01	2,178.96	174	0.0006153	172.18
			93	0.00758	2,120.87	175	0.0006146	171.99
			94	0.007202	2,015.48	176	0.000544	152.35
			95	0.007065	1,977.19	177	0.0005437	152.15
			96	0.0068586	1,919.37	178	0.000540	151.07
			97	0.00651944	1,824.46	179	0.00053041	148.44
			98	0.0064808	1,813.64	180	0.0005058	141.55
			99	0.006361	1,780.09	181	0.000505	141.40
			100	0.005749	1,608.74	182	0.00	140.96
			101	0.005305	1,484.62	183	0.00	140.81
			102	0.0048870	1,367.64	184	0.00	139.48
			103	0.00	1,332.74	185	0.000	139.15
			104	0.0047449	1,327.84	186	0.000414	138.52
			105	0.00469	1,311.81	187	0.0003662	136.95
			106	0.004674	1,308.08	188	0.00036	136.85
			107	0.0046547	1,302.63	189	0.0003474	136.34
			108	0.0045685	1,278.49	190	0.00034	136.20
			109	0.0044112	1,234.47	191	0.00	135.29
			110	0.00	1,194.19	192	0.000312	135.19
			111	0.004164	1,165.41	193	0.00	134.40
			112	0.004	1,156.57	194	0.000285	134.32
			113	0.0041	1,154.93	195	0.00	134.11
			114	0.00	1,150.64	196	0.0002626	133.57
			115	0.004090	1,144.70	197	0.0002624	133.56
			116	0.0040070	1,121.35	198	0.0002623	133.56
			117	0.0039591	1,107.96	199	0.00	133.51
			118	0.003438	962.16	200	0.0002550	133.33
			119	0.0033477	936.85	201	0.00025	133.12
			120	0.003321	929.46	202	0.000244	132.98
			121	0.0031118	870.83	203	0.000242	132.97
			122	0.00310	867.51	204	0.000	132.78
			123	0.003082	862.46	205	0.0002311	132.54
			124	0.00302	845.50	206	0.0002145	132.00
			125	0.0029780	833.40	207	0.0002	131.99
			126	0.0027976	782.91	208	0.00021241	131.93
			127	0.002709	758.12	209	0.00020	131.57
			128	0.00269	752.67	210	0.0002	131.55
			129	0.0025567	715.50	211	0.000193	131.30
			130	0.0024297	679.96	212	0.00019	131.07
			131	0.0024	671.83	213	0.0001839	131.00
			132	0.00210	586.75	214	0.000179	130.84
			133	0.002030	568.06	215	0.00017	130.63
			134	0.001970	551.19	216	0.000172	130.62

<sup>106</sup> These fees reflect the Minimum Participant Fee.

Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>
217	0.00017	130.50	299	0.00	126.22	381	0.00001	125.33
218	0.000167	130.44	300	0.000037	126.21	382	0.0000	125.32
219	0.000164	130.35	301	0.0000363	126.18	383	0.000010	125.32
220	0.0002	130.20	302	0.000035	126.13	384	0.000013	125.32
221	0.00015	129.86	303	0.00	126.10	385	0.0000	125.31
222	0.0001459	129.76	304	0.0000331	126.08	386	0.00	125.31
223	0.00015	129.74	305	0.00003294	126.08	387	0.000009	125.31
224	0.00	129.57	306	0.00	126.07	388	0.000009	125.30
225	0.0001399	129.57	307	0.000033	126.07	389	0.00001	125.29
226	0.0001348	129.40	308	0.00003	126.01	390	0.00001	125.29
227	0.0001338	129.37	309	0.00003	126.01	391	0.0000	125.28
228	0.00	129.31	310	0.0000306	126.00	392	0.0000087	125.28
229	0.00	129.25	311	0.00003	125.99	393	0.00	125.28
230	0.000	129.23	312	0.0000302	125.99	394	0.0000086	125.28
231	0.0001229	129.01	313	0.000030	125.98	395	0.00	125.28
232	0.0001	128.97	314	0.00003	125.98	396	0.00001	125.28
233	0.0001	128.95	315	0.00	125.94	397	0.00001	125.28
234	0.0001194	128.90	316	0.0000276	125.90	398	0.000008	125.28
235	0.0001174	128.83	317	0.00	125.90	399	0.0000	125.27
236	0.0001166	128.81	318	0.0000	125.90	400	0.0000084	125.27
237	0.00	128.81	319	0.0000270	125.88	401	0.0000083	125.27
238	0.0001156	128.77	320	0.0000	125.88	402	0.0000	125.27
239	0.0001	128.65	321	0.0000	125.83	403	0.00001	125.26
240	0.00	128.60	322	0.0000	125.82	404	0.0000	125.26
241	0.0000969	128.16	323	0.000025	125.82	405	0.0000079	125.26
242	0.0000959	128.13	324	0.0000250	125.81	406	0.000008	125.25
243	0.0000949	128.10	325	0.0000245	125.80	407	0.0000	125.25
244	0.0000938	128.06	326	0.000024	125.80	408	0.000008	125.25
245	0.00009	128.04	327	0.000024	125.79	409	0.00001	125.25
246	0.000091	127.97	328	0.00002295	125.75	410	0.000007	125.24
247	0.0000904	127.95	329	0.00002	125.72	411	0.00001	125.24
248	0.000090	127.93	330	0.00002	125.71	412	0.000007	125.24
249	0.0001	127.92	331	0.0000212	125.69	413	0.00001	125.24
250	0.00009	127.90	332	0.00	125.66	414	0.0000073	125.24
251	0.00008765	127.86	333	0.00001998	125.65	415	0.0000	125.24
252	0.000087	127.86	334	0.00001941	125.63	416	0.0000	125.23
253	0.000083	127.70	335	0.00	125.63	417	0.0000069	125.23
254	0.00008	127.52	336	0.0000194	125.63	418	0.00001	125.22
255	0.0000768	127.51	337	0.00	125.63	419	0.0000068	125.22
256	0.00	127.39	338	0.00	125.63	420	0.000007	125.22
257	0.0001	127.33	339	0.0000189	125.62	421	0.0000068	125.22
258	0.00	127.28	340	0.00	125.60	422	0.0000	125.22
259	0.0001	127.24	341	0.00	125.60	423	0.000007	125.22
260	0.0000685	127.24	342	0.00	125.60	424	0.000007	125.22
261	0.00006850	127.24	343	0.00002	125.58	425	0.00001	125.22
262	0.0001	127.20	344	0.0000176	125.57	426	0.00001	125.22
263	0.0001	127.20	345	0.0000174	125.57	427	0.000007	125.22
264	0.000067	127.18	346	0.0000172	125.56	428	0.0000	125.22
265	0.000066	127.16	347	0.0000164	125.54	429	0.000006	125.21
266	0.000063	127.05	348	0.000016	125.53	430	0.0000	125.21
267	0.000062	127.02	349	0.00002	125.52	431	0.00001	125.21
268	0.000061	126.98	350	0.00	125.51	432	0.000006	125.21
269	0.0001	126.96	351	0.000015	125.49	433	0.00001	125.20
270	0.000060	126.96	352	0.0000	125.49	434	0.0000061	125.20
271	0.000060	126.95	353	0.00001	125.49	435	0.0000	125.20
272	0.0000	126.92	354	0.00001	125.49	436	0.00001	125.20
273	0.000057	126.86	355	0.00001	125.48	437	0.0000060	125.20
274	0.000057	126.85	356	0.000015	125.47	438	0.0000	125.20
275	0.0001	126.83	357	0.00	125.47	439	0.0000060	125.20
276	0.0000560	126.83	358	0.00001	125.47	440	0.0000060	125.19
277	0.0000539	126.76	359	0.00	125.45	441	0.00001	125.19
278	0.0000525	126.71	360	0.0000137	125.45	442	0.0000	125.19
279	0.000051	126.66	361	0.00	125.45	443	0.000006	125.19
280	0.0001	126.64	362	0.000014	125.44	444	0.000006	125.19
281	0.000048	126.56	363	0.000014	125.44	445	0.0000057	125.19
282	0.00	126.54	364	0.000014	125.44	446	0.0000057	125.19
283	0.00	126.53	365	0.00001	125.44	447	0.00001	125.19
284	0.0000	126.51	366	0.000013	125.44	448	0.00001	125.18
285	0.000044	126.45	367	0.00001	125.43	449	0.0000	125.18
286	0.0000438	126.43	368	0.0000	125.43	450	0.000006	125.18
287	0.000044	126.43	369	0.0000127	125.41	451	0.0000	125.18
288	0.0000437	126.43	370	0.0000	125.39	452	0.000006	125.18
289	0.00	126.43	371	0.0000119	125.39	453	0.0000	125.18
290	0.000042	126.38	372	0.000011	125.37	454	0.0000	125.18
291	0.00004	126.36	373	0.0000113	125.37	455	0.0000053	125.17
292	0.00	126.35	374	0.000011	125.37	456	0.0000	125.17
293	0.000041	126.33	375	0.000011	125.36	457	0.000005	125.17
294	0.0000403	126.32	376	0.0000107	125.35	458	0.0000	125.17
295	0.0000	126.31	377	0.0000	125.34	459	0.000005	125.17
296	0.000040	126.31	378	0.0000103	125.34	460	0.0000	125.17
297	0.00004	126.28	379	0.000010	125.33	461	0.000005	125.16
298	0.000037	126.22	380	0.00001	125.33	462	0.000005	125.16

Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>
463	0.0000048	125.16	545	0.0000026	125.09	627	0.00000	125.05
464	0.00000	125.16	546	0.0000026	125.08	628	0.0000016	125.05
465	0.00000	125.16	547	0.00000258	125.08	629	0.00000	125.05
466	0.00000	125.15	548	0.0000003	125.08	630	0.000002	125.05
467	0.0000005	125.15	549	0.00000	125.08	631	0.00	125.05
468	0.0000047	125.15	550	0.0000025	125.08	632	0.000002	125.05
469	0.0000046	125.15	551	0.00	125.08	633	0.0000015	125.05
470	0.0000005	125.15	552	0.000002	125.08	634	0.0000015	125.05
471	0.000004	125.15	553	0.00	125.08	635	0.0000015	125.05
472	0.0000044	125.15	554	0.0000	125.08	636	0.0000015	125.05
473	0.00000	125.14	555	0.00000	125.08	637	0.000001	125.05
474	0.0000044	125.14	556	0.000002	125.08	638	0.00	125.05
475	0.00000	125.14	557	0.00	125.08	639	0.00000	125.05
476	0.0000043	125.14	558	0.000002	125.08	640	0.00	125.05
477	0.00000	125.14	559	0.00000	125.08	641	0.0000	125.05
478	0.000004	125.14	560	0.000002	125.08	642	0.000001	125.05
479	0.000004	125.14	561	0.000002	125.08	643	0.000001	125.05
480	0.000004	125.14	562	0.00000	125.08	644	0.000001	125.05
481	0.00	125.14	563	0.00000	125.07	645	0.000001	125.05
482	0.000004	125.14	564	0.00000	125.07	646	0.00000	125.05
483	0.0000041	125.14	565	0.00	125.07	647	0.0000014	125.05
484	0.0000041	125.13	566	0.0000022	125.07	648	0.000001	125.05
485	0.00	125.13	567	0.0000022	125.07	649	0.0000014	125.05
486	0.000004	125.13	568	0.00	125.07	650	0.0000	125.04
487	0.00000	125.13	569	0.0000022	125.07	651	0.0000	125.04
488	0.0000039	125.13	570	0.0000022	125.07	652	0.000001	125.04
489	0.000004	125.12	571	0.000002	125.07	653	0.00000	125.04
490	0.0000038	125.12	572	0.000002	125.07	654	0.0000	125.04
491	0.0000038	125.12	573	0.0000022	125.07	655	0.0000013	125.04
492	0.000004	125.12	574	0.00	125.07	656	0.000001	125.04
493	0.000004	125.12	575	0.00000	125.07	657	0.00000	125.04
494	0.000004	125.12	576	0.0000	125.07	658	0.000001	125.04
495	0.00000	125.11	577	0.000002	125.07	659	0.000001	125.04
496	0.000003	125.11	578	0.000002	125.07	660	0.0000013	125.04
497	0.000003	125.11	579	0.0000021	125.07	661	0.0000013	125.04
498	0.000003	125.11	580	0.000002	125.07	662	0.000001	125.04
499	0.00000	125.11	581	0.000002	125.07	663	0.00000	125.04
500	0.000003	125.11	582	0.00000	125.07	664	0.0000013	125.04
501	0.0000033	125.11	583	0.000002	125.07	665	0.000001	125.04
502	0.0000032	125.11	584	0.00	125.07	666	0.000001	125.04
503	0.0000	125.10	585	0.0000020	125.07	667	0.0000013	125.04
504	0.0000	125.10	586	0.0000020	125.07	668	0.000001	125.04
505	0.000003	125.10	587	0.000002	125.07	669	0.00	125.04
506	0.000003	125.10	588	0.00000	125.07	670	0.0000	125.04
507	0.000003	125.10	589	0.000002	125.07	671	0.00	125.04
508	0.00000	125.10	590	0.000002	125.06	672	0.0000012	125.04
509	0.00000	125.10	591	0.000002	125.06	673	0.00	125.04
510	0.000003	125.10	592	0.0000	125.06	674	0.000001	125.04
511	0.0000031	125.10	593	0.000002	125.06	675	0.000001	125.04
512	0.0000031	125.10	594	0.00000	125.06	676	0.000001	125.04
513	0.00000	125.10	595	0.0000	125.06	677	0.0000012	125.04
514	0.000003	125.10	596	0.000002	125.06	678	0.0000012	125.04
515	0.000003	125.10	597	0.0000	125.06	679	0.00000	125.04
516	0.000003	125.10	598	0.000002	125.06	680	0.000001	125.04
517	0.00000	125.10	599	0.00000185	125.06	681	0.000001	125.04
518	0.00000	125.10	600	0.000002	125.06	682	0.000001	125.04
519	0.000003	125.10	601	0.0000018	125.06	683	0.0000012	125.04
520	0.00000	125.10	602	0.000002	125.06	684	0.00000	125.04
521	0.000003	125.10	603	0.0000018	125.06	685	0.0000011	125.04
522	0.000003	125.09	604	0.00	125.06	686	0.00000	125.04
523	0.000003	125.09	605	0.00000	125.06	687	0.000001	125.04
524	0.0000	125.09	606	0.0000018	125.06	688	0.0000011	125.04
525	0.0000029	125.09	607	0.000002	125.06	689	0.000001	125.04
526	0.0000028	125.09	608	0.000002	125.06	690	0.0000011	125.04
527	0.00	125.09	609	0.0000017	125.06	691	0.000001	125.04
528	0.00000	125.09	610	0.0000	125.06	692	0.00000	125.04
529	0.00000	125.09	611	0.0000017	125.06	693	0.000001	125.04
530	0.00	125.09	612	0.0000017	125.06	694	0.0000011	125.04
531	0.0000027	125.09	613	0.0000017	125.06	695	0.0000011	125.04
532	0.000003	125.09	614	0.00	125.06	696	0.0000011	125.04
533	0.00000	125.09	615	0.00	125.06	697	0.00	125.03
534	0.00000	125.09	616	0.0000	125.05	698	0.000001	125.03
535	0.0000027	125.09	617	0.0000017	125.05	699	0.000001	125.03
536	0.000003	125.09	618	0.0000017	125.05	700	0.00	125.03
537	0.000003	125.09	619	0.0000017	125.05	701	0.000001	125.03
538	0.0000027	125.09	620	0.000002	125.05	702	0.00	125.03
539	0.0000027	125.09	621	0.000002	125.05	703	0.00000104	125.03
540	0.00000	125.09	622	0.0000016	125.05	704	0.00000	125.03
541	0.0000	125.09	623	0.0000	125.05	705	0.00000101	125.03
542	0.000003	125.09	624	0.0000	125.05	706	0.000001	125.03
543	0.000003	125.09	625	0.0000016	125.05	707	0.00000	125.03
544	0.0000026	125.09	626	0.000002	125.05	708	0.0000	125.03

Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>
709	0.000001	125.03	791	0.000001	125.02	873	0.000	125.01
710	0.000010	125.03	792	0.0000006	125.02	874	0.0000004	125.01
711	0.000001	125.03	793	0.000001	125.02	875	0.000000	125.01
712	0.000001	125.03	794	0.000000	125.02	876	0.0000	125.01
713	0.000001	125.03	795	0.000	125.02	877	0.000000	125.01
714	0.0000010	125.03	796	0.000001	125.02	878	0.000000	125.01
715	0.000001	125.03	797	0.0000006	125.02	879	0.00000034	125.01
716	0.00	125.03	798	0.0000	125.02	880	0.00000034	125.01
717	0.00	125.03	799	0.000000	125.02	881	0.000000	125.01
718	0.000001	125.03	800	0.0000006	125.02	882	0.000000	125.01
719	0.000001	125.03	801	0.0000006	125.02	883	0.000000	125.01
720	0.0000009	125.03	802	0.000000	125.02	884	0.000000	125.01
721	0.000001	125.03	803	0.00	125.02	885	0.0000003	125.01
722	0.00	125.03	804	0.000	125.02	886	0.000000	125.01
723	0.00	125.03	805	0.0000006	125.02	887	0.000000	125.01
724	0.0000	125.03	806	0.000000	125.02	888	0.0000003	125.01
725	0.00	125.03	807	0.0000	125.02	889	0.000000	125.01
726	0.00000	125.03	808	0.00000058	125.02	890	0.000000	125.01
727	0.000001	125.03	809	0.000001	125.02	891	0.000000	125.01
728	0.0000	125.03	810	0.00000057	125.02	892	0.000000	125.01
729	0.000001	125.03	811	0.000001	125.02	893	0.000	125.01
730	0.00	125.03	812	0.000000	125.02	894	0.000000	125.01
731	0.0000009	125.03	813	0.000000	125.02	895	0.0000	125.01
732	0.00	125.03	814	0.00	125.02	896	0.000	125.01
733	0.000001	125.03	815	0.000000	125.02	897	0.00	125.01
734	0.0000009	125.03	816	0.0000005	125.02	898	0.000000	125.01
735	0.000001	125.03	817	0.0000	125.02	899	0.000000	125.01
736	0.0000	125.03	818	0.0000005	125.02	900	0.000000	125.01
737	0.000001	125.03	819	0.000	125.02	901	0.0000003	125.01
738	0.000001	125.03	820	0.000001	125.02	902	0.000	125.01
739	0.0000008	125.03	821	0.000000	125.02	903	0.000000	125.01
740	0.0000008	125.03	822	0.000001	125.02	904	0.0000003	125.01
741	0.000001	125.03	823	0.000001	125.02	905	0.000	125.01
742	0.0000008	125.03	824	0.00	125.02	906	0.000000	125.01
743	0.000001	125.03	825	0.000000	125.02	907	0.000000	125.01
744	0.000000	125.03	826	0.0000	125.02	908	0.0000003	125.01
745	0.000000	125.03	827	0.000000	125.02	909	0.0000003	125.01
746	0.00	125.03	828	0.0000000	125.02	910	0.00000029	125.01
747	0.00	125.03	829	0.0000005	125.02	911	0.0000003	125.01
748	0.000000	125.03	830	0.000000	125.02	912	0.0000	125.01
749	0.000001	125.03	831	0.000	125.02	913	0.000000	125.01
750	0.000001	125.03	832	0.0000000	125.02	914	0.000000	125.01
751	0.000001	125.03	833	0.00	125.02	915	0.00	125.01
752	0.0000008	125.03	834	0.0000005	125.02	916	0.00	125.01
753	0.0000008	125.03	835	0.00	125.02	917	0.000000	125.01
754	0.00	125.03	836	0.000000	125.02	918	0.00000028	125.01
755	0.0000	125.03	837	0.00000047	125.02	919	0.000000	125.01
756	0.0000008	125.03	838	0.0000005	125.02	920	0.000000	125.01
757	0.000000	125.03	839	0.000000	125.02	921	0.000000	125.01
758	0.000001	125.03	840	0.0000005	125.01	922	0.0000003	125.01
759	0.0000	125.03	841	0.0000000	125.01	923	0.0000003	125.01
760	0.000	125.02	842	0.0000005	125.01	924	0.000000	125.01
761	0.000000	125.02	843	0.000000	125.01	925	0.000000	125.01
762	0.00	125.02	844	0.0000004	125.01	926	0.0000003	125.01
763	0.000000	125.02	845	0.0000000	125.01	927	0.000000	125.01
764	0.0000008	125.02	846	0.0000000	125.01	928	0.000	125.01
765	0.000	125.02	847	0.000000	125.01	929	0.0000003	125.01
766	0.0000007	125.02	848	0.0000000	125.01	930	0.0000003	125.01
767	0.00	125.02	849	0.0000	125.01	931	0.000000	125.01
768	0.000000	125.02	850	0.0000000	125.01	932	0.0000003	125.01
769	0.0000007	125.02	851	0.0000000	125.01	933	0.0000	125.01
770	0.0000007	125.02	852	0.0000000	125.01	934	0.00	125.01
771	0.0000	125.02	853	0.000000	125.01	935	0.0000002	125.01
772	0.0000007	125.02	854	0.0000000	125.01	936	0.0000002	125.01
773	0.000001	125.02	855	0.00	125.01	937	0.0000002	125.01
774	0.000001	125.02	856	0.0000000	125.01	938	0.0000002	125.01
775	0.0000007	125.02	857	0.0000004	125.01	939	0.0000000	125.01
776	0.0000007	125.02	858	0.0000000	125.01	940	0.00	125.01
777	0.000001	125.02	859	0.0000004	125.01	941	0.000000	125.01
778	0.000001	125.02	860	0.00	125.01	942	0.00	125.01
779	0.000001	125.02	861	0.000000	125.01	943	0.000000	125.01
780	0.00	125.02	862	0.0000000	125.01	944	0.000000	125.01
781	0.000001	125.02	863	0.000000	125.01	945	0.0000000	125.01
782	0.0000	125.02	864	0.000	125.01	946	0.0000000	125.01
783	0.000001	125.02	865	0.0000004	125.01	947	0.0000002	125.01
784	0.000001	125.02	866	0.0000004	125.01	948	0.0000002	125.01
785	0.0000007	125.02	867	0.00	125.01	949	0.0000000	125.01
786	0.0000007	125.02	868	0.0000	125.01	950	0.0000002	125.01
787	0.0000007	125.02	869	0.00000037	125.01	951	0.0000002	125.01
788	0.0000007	125.02	870	0.0000000	125.01	952	0.000000	125.01
789	0.0000007	125.02	871	0.0000000	125.01	953	0.0000000	125.01
790	0.0000	125.02	872	0.0000000	125.01	954	0.000000	125.01



Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>
955	0.0000002	125.01	1037	0.00	125.00	1119	0.0000000	125.00
956	0.0000	125.01	1038	0.0000000	125.00	1120	0.0000000	125.00
957	0.0000000	125.01	1039	0.00000001	125.00	1121	0.0000	125.00
958	0.00	125.01	1040	0.0000000	125.00	1122	0.0000000	125.00
959	0.0000000	125.01	1041	0.00000001	125.00	1123	0.0000000	125.00
960	0.00000002	125.01	1042	0.00000001	125.00	1124	0.0000000	125.00
961	0.0000	125.01	1043	0.00000000	125.00	1125	0.00	125.00
962	0.00000002	125.01	1044	0.0000	125.00	1126	0.0000000	125.00
963	0.00000	125.01	1045	0.0000000	125.00	1127	0.000000004	125.00
964	0.0000000	125.01	1046	0.0000000	125.00	1128	0.0000	125.00
965	0.00000002	125.01	1047	0.00000000	125.00	1129	0.00	125.00
966	0.00000000	125.01	1048	0.00000000	125.00	1130	0.0000000	125.00
967	0.00000	125.01	1049	0.00000000	125.00	1131	0.00	125.00
968	0.00000002	125.01	1050	0.00	125.00	1132	0.00000000	125.00
969	0.00	125.01	1051	0.00000001	125.00	1133	0.0000000	125.00
970	0.0000	125.01	1052	0.00000000	125.00	1134	0.0000	125.00
971	0.0000000	125.01	1053	0.0000000	125.00	1135	0.0000000	125.00
972	0.00000000	125.01	1054	0.00000000	125.00	1136	0.0000	125.00
973	0.00000002	125.01	1055	0.00000000	125.00	1137	0.0000	125.00
974	0.00000002	125.01	1056	0.00000000	125.00	1138	0.0000	125.00
975	0.00000000	125.01	1057	0.00000000	125.00	1139	0.000000003	125.00
976	0.00000000	125.01	1058	0.00000000	125.00	1140	0.0000000	125.00
977	0.00000000	125.01	1059	0.0000	125.00	1141	0.0000000	125.00
978	0.00000002	125.01	1060	0.00	125.00	1142	0.0000000	125.00
979	0.00000000	125.01	1061	0.00000000	125.00	1143	0.0000	125.00
980	0.000000018	125.01	1062	0.00000001	125.00	1144	0.00	125.00
981	0.0000	125.01	1063	0.00000000	125.00	1145	0.00	125.00
982	0.00000000	125.01	1064	0.00000000	125.00	1146	0.0000000	125.00
983	0.00000002	125.01	1065	0.00000000	125.00	1147	0.0000	125.00
984	0.00000002	125.01	1066	0.00000000	125.00	1148	0.0000000	125.00
985	0.00000002	125.01	1067	0.00000001	125.00	1149	0.0000	125.00
986	0.00000002	125.01	1068	0.00000000	125.00	1150	0.0000000	125.00
987	0.00000000	125.01	1069	0.00000000	125.00	1151	0.0000000	125.00
988	0.00	125.01	1070	0.00000001	125.00	1152	0.0000000	125.00
989	0.00000000	125.01	1071	0.00000001	125.00	1153	0.00000000	125.00
990	0.000000018	125.01	1072	0.00000001	125.00	1154	0.0000000	125.00
991	0.00000002	125.01	1073	0.00	125.00	1155	0.0000	125.00
992	0.000000017	125.01	1074	0.00000000	125.00	1156	0.00	125.00
993	0.00000000	125.01	1075	0.00000000	125.00	1157	0.0000000	125.00
994	0.00000000	125.01	1076	0.00000000	125.00	1158	0.00000000	125.00
995	0.000000017	125.01	1077	0.00000000	125.00	1159	0.0000	125.00
996	0.00000000	125.01	1078	0.00000000	125.00	1160	0.0000000	125.00
997	0.00000000	125.01	1079	0.00000000	125.00	1161	0.0000000	125.00
998	0.00000002	125.01	1080	0.00000001	125.00	1162	0.0000000	125.00
999	0.00000000	125.01	1081	0.00000000	125.00	1163	0.00000000	125.00
1000	0.00	125.01	1082	0.000000009	125.00	1164	0.00000000	125.00
1001	0.00000002	125.01	1083	0.00000000	125.00	1165	0.00000000	125.00
1002	0.00000002	125.01	1084	0.00000000	125.00	1166	0.0000	125.00
1003	0.00000000	125.01	1085	0.00	125.00	1167	0.00000000	125.00
1004	0.00000002	125.01	1086	0.00000000	125.00	1168	0.00000000	125.00
1005	0.00	125.01	1087	0.00000000	125.00	1169	0.0000	125.00
1006	0.0000	125.01	1088	0.00000000	125.00	1170	0.00	125.00
1007	0.00000000	125.01	1089	0.00000000	125.00	1171	0.00000000	125.00
1008	0.00000	125.01	1090	0.00000001	125.00	1172	0.00000000	125.00
1009	0.00000000	125.01	1091	0.000000008	125.00	1173	0.00000000	125.00
1010	0.00000002	125.01	1092	0.00000000	125.00	1174	0.00000000	125.00
1011	0.00000000	125.01	1093	0.0000	125.00	1175	0.0000	125.00
1012	0.00000000	125.01	1094	0.00000000	125.00	1176	0.00000000	125.00
1013	0.00000000	125.00	1095	0.00000001	125.00	1177	0.00000000	125.00
1014	0.00000000	125.00	1096	0.0000	125.00	1178	0.0000	125.00
1015	0.00000000	125.00	1097	0.00000000	125.00	1179	0.00000000	125.00
1016	0.00000001	125.00	1098	0.00	125.00	1180	0.00000001	125.00
1017	0.000000015	125.00	1099	0.00	125.00	1181	0.00000000	125.00
1018	0.00000	125.00	1100	0.00000000	125.00	1182	0.00000000	125.00
1019	0.00000000	125.00	1101	0.00000000	125.00	1183	0.00000000	125.00
1020	0.00000000	125.00	1102	0.0000	125.00	1184	0.00000000	125.00
1021	0.00000001	125.00	1103	0.000000006	125.00	1185	0.00000000	125.00
1022	0.00000001	125.00	1104	0.00000000	125.00	1186	0.0000	125.00
1023	0.00000	125.00	1105	0.00000000	125.00	1187	0.00000000	125.00
1024	0.00000000	125.00	1106	0.00000000	125.00	1188	0.00000000	125.00
1025	0.00000000	125.00	1107	0.000000006	125.00	1189	0.00000000	125.00
1026	0.00000000	125.00	1108	0.00000000	125.00	1190	0.00000000	125.00
1027	0.00000001	125.00	1109	0.00000000	125.00	1191	0.00000000	125.00
1028	0.00000001	125.00	1110	0.00	125.00	1192	0.00000000	125.00
1029	0.00000000	125.00	1111	0.00000000	125.00	1193	0.00000000	125.00
1030	0.00000000	125.00	1112	0.00000001	125.00	1194	0.00000000	125.00
1031	0.00000000	125.00	1113	0.00000001	125.00	1195	0.00000000	125.00
1032	0.00000000	125.00	1114	0.0000	125.00	1196	0.00000000	125.00
1033	0.00000000	125.00	1115	0.00000000	125.00	1197	0.00000000	125.00
1034	0.00000001	125.00	1116	0.00000001	125.00	1198	0.00000000	125.00
1035	0.00000000	125.00	1117	0.00000000	125.00	1199	0.0000	125.00
1036	0.00000000	125.00	1118	0.00000000	125.00	1200	0.00000000	125.00

Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>	Industry member	% of total message traffic <sup>107</sup>	Quarterly CAT fee <sup>108</sup>
1201 .....	0.000	125.00	1218 .....	0.0000000	125.00	1235 .....	0.0000000	125.00
1202 .....	0.000000	125.00	1219 .....	0.0000000	125.00	1236 .....	0.0000000	125.00
1203 .....	0.000000	125.00	1220 .....	0.0000000	125.00	1237 .....	0.0000000	125.00
1204 .....	0.0000000	125.00	1221 .....	0.0000	125.00			
1205 .....	0.00000	125.00	1222 .....	0.000000	125.00			
1206 .....	0.000000	125.00	1223 .....	0.000000	125.00			
1207 .....	0.000000	125.00	1224 .....	0.0000000	125.00			
1208 .....	0.000000	125.00	1225 .....	0.0000000	125.00			
1209 .....	0.0000000	125.00	1226 .....	0.0000000	125.00			
1210 .....	0.0000000	125.00	1227 .....	0.00	125.00			
1211 .....	0.000000	125.00	1228 .....	0.0000	125.00			
1212 .....	0.0000000	125.00	1229 .....	0.000000	125.00			
1213 .....	0.00	125.00	1230 .....	0.0000000	125.00			
1214 .....	0.0000000	125.00	1231 .....	0.0000000	125.00			
1215 .....	0.0000000	125.00	1232 .....	0.0000000	125.00			
1216 .....	0.0000000	125.00	1233 .....	0.0000	125.00			
1217 .....	0.00000000	125.00	1234 .....	0.000000	125.00			

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<sup>107</sup> These percentages reflect the market maker discounts.

<sup>108</sup> These fees reflect the Maximum Industry Member CAT Fee, the Minimum Industry CAT Fee, and re-allocations related to the applications of the Minimum Industry Member CAT Fee and the Maximum Industry Member CAT Fee.