

September 23, 2016

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 4-698
Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail

Dear Mr. Fields:

On April 27, 2016, the Securities and Exchange Commission (“SEC” or “Commission”) published the notice of the National Market System Plan Governing the Consolidated Audit Trail (“Plan”) for public comment. The SEC received 23 comment letters in response to the proposed Plan. On September 6, 2016, the parties to the Plan – Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors’ Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, Miami International Securities Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (collectively, the “Participants”) submitted a partial response to the issues raised in these letters (the “September 6 Letter”). The Participants submit this letter to respond to additional issues raised with regard to the Plan. The Participants’ additional responses are set forth in detail in the Appendix. The Participants note that these responses represent the consensus of the Participants, but that all Participants may not fully agree with each response set forth in the Appendix.

Respectfully submitted,

[Signature Pages Follow]

cc: The Hon. Mary Jo White, Chair
The Hon. Kara M. Stein, Commissioner
The Hon. Michael S. Piwowar, Commissioner
Mr. Stephen I. Luparello, Director, Division of Trading and Markets
Mr. Gary L. Goldsholle, Deputy Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets

Bats BYX EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

Bats BZX EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

Bats EDGA EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

Bats EDGX EXCHANGE, INC.

By: Tamara Schademann

Name: Tamara Schademann

Title: EVP, CRO

BOX Options Exchange LLC

By: *Bruce G. Goodhue*
Name: *Bruce G Goodhue*
Title: *Chief Regulatory Officer*
Date: *9/19/2016*

ADDRESS FOR NOTICES:

101 Arch Street, Suite 610
Boston, MA 02110
Facsimile: _____
Attention: _____

C2 OPTIONS EXCHANGE, INCORPORATED

By: 

Name: Greg Hoogasian

Title: Senior Vice President, Chief Regulatory Officer

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

By: 

Name: Greg Hoogasian

Title: Senior Vice President, Chief Regulatory officer

CHICAGO STOCK EXCHANGE, INC.

By:  _____

Name: Albert J. Kim

Title: VP and Associate G.C.


FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By: Marcia E. Asquith


Name: Marcia E. Asquith

Title: Senior Vice President and Corporate Secretary


INTERNATIONAL SECURITIES EXCHANGE, LLC

By: 
Name: John A. Zecca
Title: SVP + CRO

ISE GEMINI, LLC

By: 
Name: John A. Zecca
Title: SVP + CRO

ISE MERCURY, LLC

By: 
Name: John A. Zecca
Title: SVP + CRO

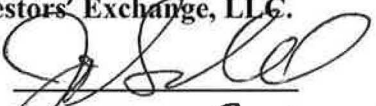
Investors' Exchange, LLC.

By:

Name:

Title:

Date:


John Schwall
COO
9/20/16

ADDRESS FOR NOTICES:

Investors' Exchange, LLC.

4 World Trade Center, 44th Floor
New York, NY 10007

Facsimile:

Attention:

John Ramsay

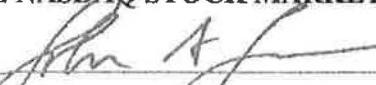
MIAMI INTERNATIONAL SECURITIES EXCHANGE LLC

By: 

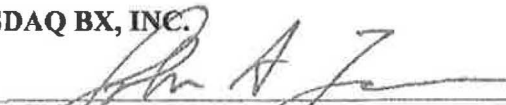
Name: Edward Deitzel

Title: EVP, CRO

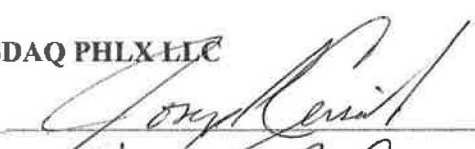
THE NASDAQ STOCK MARKET LLC

By: 
Name: John A. Zecca
Title: SUP

NASDAQ BX, INC.

By: 
Name: John A. Zecca
Title: SUP + CRO

NASDAQ PHLX LLC

By: 
Name: Joseph P. Cusick
Title: V.P. & CRO

NATIONAL STOCK EXCHANGE, INC.

By:  _____

Name: James G. Buckley _____

Title: Chief Regulatory Officer _____

NYSE ARCA, INC.

By: 

Name: Elizabeth K. King

Title: Vice President, General Counsel, Secretary

NEW YORK STOCK EXCHANGE LLC

By: 

Name: Elizabeth K. King

Title: Vice President, General Counsel, Secretary

NYSE MKT LLC

By: 

Name: Elizabeth K. King

Title: Vice President, General Counsel, Secretary

APPENDIX

Table of Contents

I.	DATA REPORTING REQUIREMENTS	4
A.	Clock Synchronization Standard.....	4
B.	Use of Legal Entity Identifiers.....	5
C.	Identification Symbology.....	6
D.	Technical Specifications	7
II.	FINANCIAL MATTERS	9
A.	Funding Model.....	9
1.	CAT Fees for Broker-Dealers	9
2.	Allocation of Costs between Participants and Broker-Dealers	10
3.	CAT Fees: Message Traffic vs. Market Share	11
4.	CAT Fees: ATSS vs. Exchanges	13
5.	CAT Development Costs	13
6.	CAT Fees: Data Processing vs. Regulatory CAT Use.....	14
7.	Fee Transparency	14
8.	Regulatory Usage Fee	15
9.	Centralized Fee Collection.....	15
10.	Cost Savings.....	16
11.	Effect on Market Behavior.....	16
12.	Conflicts of Interest.....	16
13.	Reduction of Existing Fees	17
14.	Industry Engagement	18
B.	Limitations on Distributions of Capital	18
III.	RETIREMENT OF SYSTEMS	19
A.	General Timelines	19
1.	Categorization of Industry Reporters as OATS Reporting Firms and OATS Exempt Firms.....	19
2.	Plan Requirement to Retire Duplicative Reporting Systems	20
3.	Accelerated Timeline for Analyzing Duplicative Systems.....	21
4.	Exemption for Individual CAT Reporters from Duplicative Reporting	26

5.	Six Month Trial Period	27
B.	Implementation and Development	27
1.	Inclusion of Existing Surveillance Methods	27
2.	Moratorium on Changes to Duplicative Systems	28

I. DATA REPORTING REQUIREMENTS

A. Clock Synchronization Standard

Two commenters state that they generally support the clock synchronization standard described in the Plan.¹ One commenter suggests that clock synchronization should be less than 50 milliseconds of the time maintained by the National Institute of Standards and Technology (“NIST”) since firms that receive direct feeds from exchanges have clocks that are synchronized more precisely than required by the Plan.² The commenter also states that the Commission should require “the same best time-accuracy and resolution as the [CAT Reporter³] has adopted, used or is available for its internal and/or commercial purposes.”⁴

The Participants continue to believe that the clock synchronization standard for Industry Members should be within 50 milliseconds of the time maintained by NIST. The Participants discussed this topic with Industry Members and conducted a survey of Industry Members to better understand current clock synchronization practices. The Participants also considered various clock synchronization options, which ranged from microseconds to one second, before concluding to use a 50 milliseconds standard for Industry Members. The Participants believe this standard represents the current industry standard for Industry Members and is appropriate for Industry Members for the initial implementation of the CAT. In addition, based on their analysis, the Participants believe that imposing a finer clock synchronization standard as part of the initial implementation of the CAT would significantly increase the cost of compliance for some segments of the industry.⁵ Moreover, the Participants also recognize the value of having the clock synchronization standards set forth in the Plan for Industry Members align with FINRA’s newly adopted clock synchronization rule.⁶ The Participants also note that the Operating Committee will be reviewing the synchronization standard annually and will reduce the permitted drift as appropriate.⁷

The Participants note, however, that all Participants currently operate pursuant to a clock synchronization of 100 microseconds with regard to their electronic systems, but not certain manual systems, such as the manual systems operated on the trading floor, manual order entry devices, and certain other systems. Accordingly, the Participants believe that the Plan should require the Participants to adhere to this finer clock synchronization standard with regard to their electronic systems, subject to certain exceptions. The Participants recommend that the SEC amend Section 6.8(a)(i) as follows:

¹ Letter from Kelvin To, Data Boiler Technologies, LLC, to Brent J. Fields, SEC (July 15, 2016) (“Data Boiler Letter”) at 9, 20; Letter from Mary Lou Von Kaenel, Financial Information Forum, to Brent J. Fields, SEC (July 18, 2016) (“FIF Letter”) at 12.

² Letter from Dennis M. Kelleher, Stephen W. Hall and Lev Bagramian, Better Markets, Inc., to Brent J. Fields, SEC (July 18, 2016) (“Better Markets Letter”) at 8.

³ Capitalized terms are defined as set forth in the Plan unless otherwise indicated.

⁴ Better Markets Letter at 8.

⁵ Plan, Appendix C, Section D.12(p) at Appendix C-127.

⁶ See FINRA Rule 4590; Securities Exchange Act Release No. 77565 (Apr. 8, 2016), 81 Fed. Reg. 22136 (Apr. 14, 2016) (Order Approving FINRA Rule 4590).

⁷ Plan, Section 6.8(c).

(a) Each Participant shall:

(i) other than such Business Clocks used solely for Manual Order Events, synchronize its Business Clocks at a minimum to within [50 milliseconds] 100 microseconds of the time maintained by the National Institute of Standards and Technology, consistent with industry standards;

[additions underlined; deletions bracketed]

B. Use of Legal Entity Identifiers

Five commenters suggest that the Plan should mandate that Industry Members provide their Legal Entity Identifiers (“LEIs”) to the Plan Processor.⁸ Two of the commenters believe that the Commission should mandate the use of LEIs whenever they may be applicable.⁹ One of the commenters believes that the Plan Processor should use the LEIs for purposes of developing the CAT Reporter and Customer ID.¹⁰ However, the commenter believes that LEIs should not be mandated for natural persons, individual investors or accounts that cannot easily be defined as a natural person or legal entity (*e.g.*, trusts), and suggests that the Participants should consider exclusions for certain types of trust and small business accounts.¹¹ One of the commenters supports an approach in which broker-dealers would provide LEIs to the CAT in each instance where the LEI is already known and collected.¹² One of the commenters supports the use of LEIs in conjunction with other recognized personal identifiers in order to identify customers.¹³

Based on discussions with the Development Advisory Group (“DAG”), the Participants agree with the commenters that it would be reasonable to require an Industry Member to provide its LEI or the LEI of a customer to the CAT as part of Customer Identifying Information if the Industry Member has or acquires such LEIs. The Participants do not believe, however, that the Plan should require Industry Members or others to obtain an LEI if they do not already have an LEI. Similarly, based on discussions with the DAG, the Participants believe that Industry Members should be permitted to provide LEIs in their possession to the CAT without the imposition by the CAT of any due diligence obligations beyond those that may exist today with respect to information associated with an LEI. The Participants note that, although Industry Members will not be required to perform additional due diligence with regard to the LEIs for CAT purposes, the Industry Members will be required to accurately provide the LEIs in their records and may not knowingly submit inaccurate LEIs to the CAT. In addition, the Bidders

⁸ Better Markets Letter at 8; Data Boiler Letter at 22-23; Letter from Larry E. Thompson, DTCC, to Brent J. Fields, SEC (July 18, 2016) (“DTCC Letter”) at 4; Letter from Theodore R. Lazo, and Ellen Greene, Securities Industry and Financial Markets Association, to Brent J. Fields, SEC (July 18, 2016) (“SIFMA Letter”) at 36-37; Letter from Mark Husler and Jonathan Jachym, UnaVista, to Brent J. Fields, SEC (July 18, 2016) (“UnaVista Letter”) at 3.

⁹ Better Markets Letter at 8; DTCC Letter at 1.

¹⁰ DTCC Letter at 4.

¹¹ *Id.* at 4-5.

¹² SIFMA Letter at 36.

¹³ UnaVista Letter at 3.

have indicated that their solutions will be able to support the reporting of LEIs. Moreover, although the Participants believe that there are costs related to requiring Industry Members to provide an LEI if they have one, the Participants believe that the benefits outweigh the costs.¹⁴ Accordingly, the Participants recommend that the SEC amend the definition of Customer Identifying Information set forth in Section 1.1 of the Plan as follows:

“Customer Identifying Information” means information of sufficient detail to identify a Customer, including, but not limited to, (a) with respect to individuals: name, address, date of birth, individual tax payer identification number (“ITIN”)/social security number (“SSN”), individual’s role in the account (*e.g.*, primary holder, joint holder, guardian, trustee, person with the power of attorney); and (b) with respect to legal entities[:] (i) that are Industry Members that have a Legal Entity Identifier (“LEI”): LEI; or (ii) other than Industry Members that have an LEI: name, address, Employer Identification Number (“EIN”)/LEI or other comparable common entity identifier, if applicable; provided, however, where the LEI or other common entity identifier is provided, information covered by such common entity identifier (*e.g.*, name, address) would not need to be separately submitted to the Central Repository.

[additions underlined; deletions bracketed]

The Participants also recommend that the SEC amend Section 6.4(d)(vi) as follows:

(vi) Each Industry Member must submit to the Central Repository information sufficient to identify such Industry Member (*e.g.*, CRD or LEI); provided, however, that an Industry Member that has an LEI must submit its LEI.

[additions underlined; deletions bracketed]

C. Identification Symbolology

One commenter believes that the CAT is an opportunity to introduce an identification symbolology “that provides not only an integrated view of equities and options, but also transparency into other markets that influence equities and options, and may reduce reporting complexity and costs for the industry and regulators overall.”¹⁵ The commenter also believes that this can be accomplished by requiring the adoption of an identifier that is uniform, global, multi-asset and that has an open data standard.¹⁶ Such identifier, the commenter explains, would save the industry, the Participants and the Commission substantial time and resources.¹⁷

¹⁴ The Participants do not believe that the proposed use of LEIs would reduce the granularity of information provided as the proposed use of LEIs would not change the provisions related to the SRO-Assigned Market Participant Identifiers (*e.g.*, MPIDs). See Plan, Section 1.1 (definition of SRO-Assigned Market Participant Identifier) and Section 6.3 (requiring reporting of SRO-Assigned Market Participant Identifier).

¹⁵ Letter from Gary Stone, Bloomberg, L.P., to Brent J. Fields, SEC (July 18, 2016) (“Bloomberg Letter”) at

5.

¹⁶ *Id.*

¹⁷ *Id.*

Conversely, another commenter believes that listing exchange symbology should be optional on the CAT interface and CAT Reporters should be permitted to use “whatever symbology is dictated by the reporting event, which may differ over the course of the transaction life cycle.”¹⁸

After discussing this topic with Industry Members and the Bidders, the Participants drafted the Plan to require CAT Reporters to submit data to the CAT with the listing exchange symbology format, and continue to believe that this is the most efficient, cost-effective and least error prone approach to symbology.¹⁹ Based on discussions with the DAG, the Participants understand that all Industry Members subject to OATS or electronic blue sheet reporting requirements currently use the symbology of the listing exchange when submitting such reports.²⁰ In reaching this conclusion, the Participants rejected the proposal to adopt a new symbology approach, as proposed by one commenter, concluding that it would add significant cost and complexity for the industry. In addition, the Participants concluded that permitting CAT Reporters to determine symbology (rather than relying on the listing exchange symbology) and to have the Plan Processor translate the symbology of different CAT Reporters to the listing exchange symbology would require each CAT Reporter to submit regular mapping symbology information to the CAT, thereby increasing the complexity and the likelihood for errors in the CAT. Accordingly, the Participants continue to support the proposed use of the primary market exchange symbology.

Based on conversations with the DAG and as noted by one commenter,²¹ however, the Participants understand that some industry messaging formats, such as some exchange binary formats, require symbology other than the primary listing exchange symbology. Accordingly, to the extent that the Plan Processor determines that the submission of data to the CAT in a standard industry symbology other than the primary listing exchange symbology (*e.g.*, symbology used by an exchange other than the primary listing market) is necessary or recommended, the Participants recommend that the SEC amend Section A.1(a) of Appendix C and Section 2 of Appendix D of the Plan to permit the use of such symbology, subject to approval by the Operating Committee.

D. Technical Specifications

After additional review and pursuant to discussions with the SEC staff, the Participants believe that certain milestones related to the publication and implementation of the methods for providing information to the Customer-ID database, as set forth in Appendix C of the Plan, should better align with the milestones related to the submission of order and MM Quote data to

¹⁸ FIF Letter at 12.

¹⁹ Plan, Appendix C, Section A.1(a) at Appendix C-5 and Appendix D, Section 2 at Appendix D-6. The Plan requires the Participants to provide the Plan Processor with issue symbol information, and the Plan Processor to maintain a complete symbology database, including historical symbology. In addition, issue symbol validation must be included in the processing of data submitted by CAT Reporters. Plan, Appendix C, Section A.1(a) at Appendix C-5.

²⁰ See, *e.g.*, OATS Reporting Technical Specifications (Sept. 12, 2016) (available at http://www.finra.org/sites/default/files/TechSpec_9122016.pdf) (requiring data to be reported using symbol format published by primary listing exchange for listed securities).

²¹ FIF Letter at 95.

the Central Repository, also as set forth in Appendix C. Accordingly, the Participants recommend that the SEC amend Appendix C, Section C.10(a) of the Plan as follows:

(a) **Publication and Implementation of the Methods for Providing Information to the Customer-ID Database**

Milestone	Projected Completion Date
Selection of Plan Processor	
Participants jointly select the Initial Plan Processor pursuant to the process set forth in Article V of the CAT NMS Plan	2 months after Effective Date
Industry Members (other than Small Industry Members²²)	
<u>Plan Processor begins developing the procedures, connectivity requirements and Technical Specifications for Industry Members to Report Customer Account Information to the Central Repository</u>	<u>15 months before Industry Members (other than Small Industry Members) are required to begin reporting data to the Central Repository</u>
<u>Plan Processor publishes iterative drafts of the procedures, connectivity requirements and Technical Specifications for Industry Members to Report Customer Account Information to the Central Repository</u>	<u>As needed before publishing the final documents</u>
Plan Processor publishes the procedures, connectivity requirements and Technical Specifications for Industry Members to report Customer Account Information to the Central Repository	6 months before Industry Members (other than Small Industry Members) are required to begin reporting data to the Central Repository
Industry Members (other than Small Industry Members) begin connectivity and acceptance testing with the Central Repository	3 months before Industry Members (other than Small Industry Members) are required to begin reporting data to the Central Repository

²² Small broker-dealers are defined SEC Rule 0-10(c).

Industry Members (other than Small Industry Members) begin reporting customer / institutional / firm account information to the Central Repository for processing	1 month before Industry Members (other than Small Industry Members) are required to begin reporting data to the Central Repository
Small Industry Members	
Small Industry Members begin connectivity and acceptance testing with the Central Repository	3 months before Small Industry Members are required to begin reporting data to the Central Repository
Small Industry Members begin reporting customer / institutional / firm account information to the Central Repository for processing	1 month before Small Industry Members are required to begin reporting data to the Central Repository

[additions underlined; deletions bracketed]

II. FINANCIAL MATTERS

A. Funding Model

1. CAT Fees for Broker-Dealers

Two commenters request further justification for imposing any fee on broker-dealers to fund the CAT.²³ In particular, the commenters note that “[h]aving broker-dealers directly fund a portion of the creation and ongoing use of a system owned and operated by the SROs is a significant departure from current practices.”²⁴

SEC Rule 613 specifically contemplates broker-dealers contributing to the funding of the CAT. SEC Rule 613 requires that the Participants discuss “[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.”²⁵ In discussing the adoption of this requirement in SEC Rule 613, the SEC stated that the Participants “may seek to recover some or all of these costs from their members,” and “[i]f the plan sponsors seek to recover costs from their members, the Commission believes that it is important to understand the plan sponsors’ plans to allocate

²³ SIFMA Letter at 14; Letter from Industry Members, including FIF, SIFMA, and STA of the Development Advisory Group, to Brent J. Fields, SEC (July 20, 2016) (“DAG Letter”) at 5. *See also* Letter from John Russell and James Toes, Securities Traders Association, to Brent J. Fields, SEC (July 25, 2016) (“STA Letter”) at 1.

²⁴ SIFMA Letter at 14. *See also* DAG Letter at 5.

²⁵ Securities Exchange Act Rel. No. 67457 (Jul 18, 2012), 77 Fed. Reg. 45722, 45794 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

costs between themselves and their members, to help inform the Commission's decision regarding the possible economic or competitive impact of the NMS plan."²⁶ Accordingly, in adopting SEC Rule 613, the SEC expected that funding would involve both Participant and Industry Member contributions.

In addition, as noted by the SEC, the CAT "substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,"²⁷ thereby benefitting all market participants. Therefore, the Participants believe that it is equitable for both Participants and broker-dealers to contribute to funding the cost of the CAT.

Moreover, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the proposed approach of charging a fee designated to cover CAT costs only.

2. Allocation of Costs between Participants and Broker-Dealers

Three commenters express concern that the proposed allocation of CAT costs between Participants and broker-dealers is inequitable, with the broker-dealers shouldering the weight of the cost burden.²⁸ In particular, the commenters object to broker-dealers paying for 88% of the ongoing annual costs of the CAT (*i.e.*, \$1.5 billion out of a total of \$1.7 billion).

The Participants believe that the proposed allocation of costs between broker-dealers and the Participants is appropriate, and that the concerns expressed by commenters fail to consider several critical aspects regarding the SEC's data. First, the proposed funding model is designed to provide a framework for the recovery of the costs associated with creating, implementing and operating the CAT, as contemplated by SEC Rule 613.²⁹ The funding model is not designed to address the broker-dealers' (or the Participants') cost of compliance with the reporting requirements of the CAT. The SEC's estimates that are quoted by the commenters, however, refer to costs incurred directly by broker-dealers for compliance with SEC Rule 613, such as the purchase of new systems, or the hiring of personnel, associated with the reporting requirements; these estimates do not refer to the CAT fees to be imposed pursuant to the Plan. Indeed, the broker-dealers' compliance costs would be incurred regardless of the funding model.

Second, the Participants note that the 88% cost figure refers to the percentage of costs that will be borne by all CAT Reporter broker-dealers in the aggregate. The Participants note that there are almost 100 times more broker-dealers expected to report to the CAT than Participants (*i.e.*, 1800 broker-dealer CAT Reporters versus 21 Participants). Therefore, the

²⁶ *Id.* at 45795.

²⁷ *Id.* 45726.

²⁸ Letter from John A. McCarthy, KCG Holdings, Inc. to Brent J. Fields, SEC (July 20, 2016) ("KCG Letter") at 4-5; DAG Letter at 4-5; SIFMA Letter at 16-17. *See also* STA Letter at 1.

²⁹ SEC Rule 613(a)(1)(vii)(D) (requesting how plan sponsors propose to fund the creation, implementation and maintenance of the CAT).

Participants could be expected to pay far more than the broker-dealers on a per CAT Reporter basis.³⁰

3. CAT Fees: Message Traffic vs. Market Share

Two commenters request further explanation as to why the proposed funding model charges broker-dealers based on message traffic while it charges Execution Venues based on market share.³¹

In designing a funding model, the Participants have sought to ensure an equitable allocation of fees such that large broker-dealers or broker-dealer complexes and large Participants or Participant complexes pay more than small broker-dealers and small exchanges. Specifically, the Plan states that, in establishing the funding for the CAT LLC, the Operating Committee shall seek “to establish a tiered fee structure in which the fees charged to . . . 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).”³² The Participants continue to believe that this bifurcated funding model is appropriate for several reasons.

The Participants contend that charging broker-dealers based on message traffic is the most equitable means for establishing fees for broker-dealer CAT Reporters. Broker-dealers generally will create larger volumes of message traffic as their businesses grow in size. Accordingly, because there is a strong correlation between message traffic and the size of a broker-dealer and because message traffic is a key component of the costs of operating the CAT, message traffic is an appropriate criteria for placing broker-dealers in a particular fee tier.

In contrast, the Participants have not found the same level of correlation between message traffic and size for Execution Venues. Equity Execution Venues and options Execution Venues, respectively, produce similar volumes of message traffic regardless of their size. Therefore, if Execution Venues were charged based on message traffic, large and small Execution Venues would pay comparable fees, thus making the fee structure inequitable.

³⁰ The Participants recognize, however, that the design of the Plan as a whole has a financial impact on the broker-dealers’ costs of compliance. Accordingly, the Participants considered the industry’s input on a broad range of topics, which would be expected to impact the broker-dealers’ cost of compliance, and have endeavored to propose the most cost effective plan that does not compromise the regulatory integrity of SEC Rule 613. For example, the Participants have included the exemptive requests in the Plan as a means for reducing costs to the industry. Moreover, the Participants note that estimates for the cost of building and operating the CAT have evolved and are considerably lower than the estimates provided in the Plan Proposing Release. Securities Exchange Act Release No. 77724 (Apr. 27, 2016), 81 Fed. Reg. 30614, 30708-38 (May 17, 2016) (“Plan Proposing Release”). For example, more recent discussion with and submissions by the Bidders indicate that the expected Plan Processor costs are less than proposed, now ranging from approximately \$37.5 - \$65 million for building the CAT and approximately \$36.5 - \$55 million for annual operations. Finally, the Participants note that the retirement of existing systems should offset some of these costs.

³¹ SIFMA Letter at 16-17; DAG Letter at 5.

³² Plan, Section 11.2(c).

Accordingly, the Participants determined to treat Execution Venues and broker-dealers differently in the funding model.

Moreover, the proposed bifurcated funding model was designed to ensure comparable fees between Execution Venues and broker-dealers. For example, the proposed model establishes fees for even the smallest Execution Venues that are comparable to the largest broker-dealers. In addition, the proposed funding model establishes aggregate fees for Participant complexes that are at least comparable to those of large broker-dealers. Indeed, the proposed funding model estimates total fees for associated Participant complexes that are in several cases nearly two to three times larger than the single largest broker-dealer complex. For example, according to the model's estimates, the largest broker-dealer complex would owe approximately \$850,000 in CAT fees, while the three largest Participant complexes would owe approximately \$1.3 million – \$2.3 million each in CAT fees.

The Participants, however, propose to make one change to the proposed funding model. The Participants propose to amend the manner in which market share will be calculated 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 Stock or OTC Equity Securities. For such an association, its market share for purposes of the funding model would not include the share volume reported to the national securities association by an alternative trading system ("ATS"), as such share volume will be included in the market share calculation for that ATS. Specifically, the Participants recommend that the SEC amend Section 11.3(a) of the Plan as follows:

Section 11.3 Recovery

(a) The Operating Committee will establish fixed fees to be payable by Execution Venues as provided in this Section 11.3(a):

(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 national securities associations that have trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume

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

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

[additions underlined; deletions bracketed]

4. CAT Fees: ATs vs. Exchanges

One commenter questions why the funding model would treat ATs and exchanges in the same way.³³ The Participants determined to treat exchanges and ATs in the same manner under the funding model because their business models and anticipated burden on the CAT are similar.

5. CAT Development Costs

Two commenters object to the Participants' proposal to recover the costs incurred in the creation and development of the Plan, particularly the legal and consulting costs associated with the development of the Plan.³⁴ The Participants continue to believe that the proposal to recover such costs is not only consistent with SEC Rule 613, but also the policy goals of SEC Rule 613. SEC Rule 613 requires that the Participants discuss "[h]ow the plan sponsors propose to fund the creation . . . of the consolidated audit trail."³⁵ In discussing the adoption of this requirement in Rule 613, the SEC stated that "although the plan sponsors likely would initially incur the costs to establish and fund the central repository directly, they may seek to recover some or all of these costs from their members."³⁶ Accordingly, the SEC specifically contemplated that the Participants could propose recovering costs incurred in the development of the Plan, and legal and consulting costs are critical to the development of the Plan. In addition, as noted by the SEC, the CAT is intended to benefit the market as a whole,³⁷ and, therefore, the Participants believe that it would be consistent for them to determine that both the Participants and the broker-dealers should bear an equitable burden in funding the development of the Plan governing the operation of the CAT.

³³ SIFMA Letter at 16-17.

³⁴ SIFMA Letter at 15; DAG Letter at 4-5.

³⁵ SEC Rule 613(a)(1)(vii)(D).

³⁶ Rule 613 Adopting Release at 45795.

³⁷ Rule 613 Adopting Release at 45726 (asserting that the CAT "should substantially enhance the ability of the SROs and the Commission to oversee today's securities markets").

6. CAT Fees: Data Processing vs. Regulatory CAT Use

One commenter expresses the view that the funding approach set forth in the Plan should make a distinction between the costs directly related to data processing and the costs associated with the system components designed to support the regulatory use of the CAT.³⁸ Without such a distinction, the commenter states that the funding model could permit the Participants to shift the cost of surveilling the markets from the Participants to the broker-dealers. Another commenter recommends that the funding model should be based on a successful red-flagging approach.³⁹

The Participants have discussed the drivers of the estimated costs of building and operating the CAT with the Bidders on several occasions. The Bidders identified data ingestion and processing as the primary driver of costs reflected in the respective Bids. Based on this analysis, the Participants believe that such data processing provides a reasonable basis for distributing costs to CAT Reporters.

7. Fee Transparency

Three commenters request a greater level of transparency within the Plan regarding how the Participants propose to establish CAT fees for broker-dealers and for the Participants.⁴⁰ For example, commenters request additional information regarding the metrics used to calculate the tiers, and how fees will be allocated between broker-dealers and Execution Venues.⁴¹

The Participants determined that the tiered fixed fee funding model, as proposed in the Plan, is the model that is most aligned with the funding principles adopted by the Participants. This model establishes tiers of fixed fees based on message volume for broker-dealers and market share for Execution Venues. A pre-determined percentage of the CAT's costs will be charged to each tier. The Participants agree that the details regarding the tiers and the related fees are important considerations in the funding model. Accordingly, the Participants are actively developing the tiers and other aspects of the funding model.

Moreover, once the Plan Processor is selected, the Operating Committee will work with the Plan Processor to finalize the tiers and to calculate the fees associated with each tier based on the funding methodology described in the Plan. After such consultation, the Participants will file the fees with the SEC pursuant to Section 19(b) of the Exchange Act, and Rule 19b-4 thereunder. Accordingly, broker-dealers and other market participants will have the opportunity to comment on the fee proposal.

³⁸ SIFMA Letter at 17.

³⁹ Data Boiler Letter at 15.

⁴⁰ Letter from Marc R. Bryant, Fidelity Investments, to Brent J. Fields, SEC (July 18, 2016) ("Fidelity Letter") at 5; SIFMA Letter at 16; DAG Letter at 5. *See also* STA Letter at 1.

⁴¹ SIFMA Letter at 16.

8. Regulatory Usage Fee

Two commenters recommend that the Participants commit to charging the Participants and the SEC a usage fee in connection with their use of the CAT for regulatory purposes.⁴² The Participants agree that there are potential benefits to charging such a regulatory usage fee. Accordingly, the Plan specifically authorizes the imposition of an ancillary fee “based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).”⁴³ Furthermore, the Plan states that “[c]riteria and schedules for ancillary fees that might be collected pursuant to Article XI are also anticipated to be published by the Operating Committee.”⁴⁴ The Participants believe, however, that it is premature to establish such a usage fee at this time. The Participants believe that, in order to decide whether to impose such a fee and how to estimate the appropriate level of such a fee, the Participants must gain a better understanding of how the CAT will be used by the regulators and how such usage will impact the operational costs of the CAT. Accordingly, the Participants plan to evaluate the potential implementation of such usage fees within a year after the Participants commence using the CAT for regulatory purposes to better understand regulatory use of the system and whether or not usage fees would be practical or effective.

9. Centralized Fee Collection

One commenter recommends that the Plan should require any fees imposed on broker-dealers to be collected centrally by the CAT, and should not try to allocate each broker-dealer’s CAT fees across the Participants.⁴⁵ The Participants agree with the commenter that the centralization of the CAT funding mechanism would be the most efficient and consistent approach to fee collection. Specifically, the Operating Committee will establish the CAT fees,⁴⁶ and each Participant will adopt rules pursuant to Section 19 of the Exchange Act and Rule 19b-4 thereunder requiring its members to pay all CAT fees authorized under the Plan.⁴⁷ Each broker-dealer will receive one invoice for its applicable fees, not separate invoices from each Participant of which it is a member. The broker-dealers will pay the fees via the system for the collection of CAT fees established by the Operating Committee.⁴⁸ Although the exact fee collection system has not yet been established, all such fees will be billed and collected centrally through the CAT LLC, via the Plan Processor or otherwise. The fees will not be collected by the individual Participants.

⁴² DAG Letter at 5; SIFMA Letter at 15. *See also* Letter from Richard Foster, Financial Services Roundtable, to Brent J. Fields, SEC (July 15, 2016) (“FSR Letter”) at 10 (recommending that the SEC and Participants be allocated some of the CAT costs as the CAT provides a resource for regulatory oversight).

⁴³ Plan, Section 11.3(c)(iii) at 69.

⁴⁴ Plan, Appendix C, Section B.7(b)(iv)(C) at Appendix C-85.

⁴⁵ SIFMA Letter at 15.

⁴⁶ Plan, Section 11.3 at 69.

⁴⁷ Plan, Section 11.4 at 70.

⁴⁸ Plan, Section 11.4 at 70.

10. Cost Savings

Two commenters suggest that the CAT be funded, at least in part, by cost savings realized by the Participants as a result of moving surveillance operations from existing systems to the CAT.⁴⁹ One commenter also notes its view that the CAT, as proposed, does not provide any cost savings outside the retirement of systems.⁵⁰

As with the broker-dealer CAT Reporters, the Participants expect to realize savings associated with the retirement of existing systems when moving to the CAT. The Participants estimate such cost savings as approximately \$10.6 million. However, the Participants, like other CAT Reporters, will also incur expenses associated with complying with the CAT reporting requirements. The Participants estimate such expenses will be approximately \$17.9 million. In addition, the Participants estimate that they will incur an additional \$23.2 million in expenses related to the implementation of surveillance programs. Therefore, the Participants expect that the Participants' savings associated with the retirement of systems will be used to partially offset these additional CAT expenses.

11. Effect on Market Behavior

One commenter raises concerns that the imposition of a fee based on message traffic would discourage the display of quotes, a practice that is generally considered a positive force for price discovery.⁵¹ As a preliminary matter, the Participants agree that the funding model for the CAT, as stated in the Plan, should "avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality."⁵² Accordingly, the Participants actively considered the market quality concerns in devising the proposed funding model. Indeed, one of the reasons⁵³ for proposing a tiered, fixed fee funding model was to limit the disincentives to providing liquidity to the market. In particular, the Participants believed that strictly variable or metered funding models based on message volume were far more likely to affect market behavior. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model.

12. Conflicts of Interest

Two commenters express concern regarding the potential conflicts of interest raised by the Participants allocating fees between the Participants and broker-dealers.⁵⁴ The commenters are concerned that the fees would be structured to favor the Participants' commercial interests

⁴⁹ SIFMA Letter at 17-18; DAG Letter at 4.

⁵⁰ Data Boiler Letter at 36.

⁵¹ SIFMA Letter at 17.

⁵² Plan, Section 11.2(e) at 69.

⁵³ See Plan, Appendix C, Section B.7(b)(v)(B) at Appendix C-87 for a discussion of other benefits of the proposed funding model.

⁵⁴ SIFMA Letter at 14; Fidelity Letter at 5.

over the broker-dealers. To address this conflict,⁵⁵ two commenters recommend engaging an independent third-party to conduct an audit and review of the Participants' current regulatory revenues and how that money is allocated, and to determine any fee that the Participants charge.⁵⁶

The Participants have proposed various measures to address the concerns raised by the commenters. As set forth in the Plan⁵⁷ and as required under the Exchange Act, all CAT fees must be filed with the SEC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder. Accordingly, broker-dealers and other members of the public will have an opportunity to comment on any such fees when they are published by the SEC. In addition, the SEC will be required to evaluate such fees to determine whether they are consistent with the Exchange Act, including whether the rules governing the 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."⁵⁸ Moreover, the Participants propose to establish a funding method that operates the CAT LLC on a break-even basis.⁵⁹ Accordingly, the Plan is designed to avoid providing a profit for any individual Participant. The Participants believe that these measures adequately protect against the potential conflicts issues raised by the Participants' fee-setting authority. Furthermore, the Participants believe that, since SEC Rule 613 places the obligation to create, implement and maintain the CAT on the Participants, the Participants, not a third party, must have the ability to establish reliable funding for the CAT. Finally, under their rules, some Participants are prohibited from using regulatory fees for commercial purposes.⁶⁰ Accordingly, the Participants do not believe that it is necessary to employ an independent third party to evaluate an appropriate CAT fee.⁶¹

13. Reduction of Existing Fees

Two commenters request additional details regarding how CAT fees would be incorporated into the existing funding model for regulation, and whether there would be a reduction of existing regulatory fees, such as FINRA's Trading Activity Fee.⁶² The Participants believe that the existing regulatory fees of each Participant will need to be reevaluated once the CAT begins operation, and the Participants begin to retire legacy systems. Once the Participants have more experience with the CAT and have revised their surveillance methods accordingly,

⁵⁵ One commenter recommended providing market participants, such as broker-dealers and institutional investors, a meaningful role in CAT governance as means for addressing this conflict of interest. Fidelity Letter at 5. We address governance issues in Section I of the September 6 Letter.

⁵⁶ SIFMA Letter at 14; KCG Letter at 4.

⁵⁷ Plan, Section 11.1(b) at 68.

⁵⁸ Section 6(b)(4) of the Exchange Act.

⁵⁹ Plan, Appendix C, Section B.7 at Appendix C-85. See Section B of this letter for further discussion of this break-even model.

⁶⁰ See, e.g., Fourth Amended and Restated Bylaws of BATS BZX Exchange, Inc., Art. X, Sec. 4; Third Amended and Restated Limited Liability Company Agreement of International Securities Exchange, LLC, Art. III, Sec. 3.3(ii); Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06.

⁶¹ In addition, the Participants do not believe that their current regulatory revenues have any relevance to the funding of the CAT, and, therefore, do not believe that it is appropriate or justified to require such revenues to be made public as a prerequisite to establishing funding for the CAT.

⁶² SIFMA Letter at 14; DAG Letter at 5.

each Participant will evaluate its fee structures and determine how its existing fees should be revised, if at all.

14. Industry Engagement

One commenter expresses concern that “the SROs have created a funding model with no input from broker-dealers.”⁶³ Another commenter states that the funding model does not adequately represent the feedback provided in multiple DAG meetings.⁶⁴ The Participants disagree with the assertion that the funding model was created without broker-dealer input. As described in the Plan, the Participants “discussed the potential approaches to funding, including the principles articulated in Article XI and an illustrative funding model, with the DAG multiple times.”⁶⁵ The DAG includes representatives from various broker-dealers, as well as associations of broker-dealers.⁶⁶ In addition, the Participants developed the proposed funding model taking into consideration the input of the DAG members. For example, the DAG members recommended a fixed fee to provide billing certainty to the CAT Reporters.

B. Limitations on Distributions of Capital

Two commenters recommend amending the Plan to state explicitly that any profits arising from the CAT may not be used to fund the Participants’ other operations.⁶⁷ Specifically, the commenters recommend including the limitations regarding distributions of capital from the CAT LLC to the Participants outlined in Appendix C of the Plan as an affirmative obligation in the Plan. Another commenter recommends amending the Plan to distribute any profits among both broker-dealers and the Participants, rather than only among the Participants.⁶⁸

As described in Appendix C of the Plan, the Participants expect to operate the CAT on a break-even basis – that is, the fees imposed and collected would be intended to cover CAT costs and an appropriate reserve for CAT costs. Any surpluses would be treated as an operational reserve to offset fees in future payment. The Participants describe this approach in detail in Appendix C:

Section 8.5 of the CAT NMS Plan addresses the very limited situations in which the Company may need to make distributions of cash and property of the Company to the Participants. Any distribution to the Participants requires approval by a Supermajority Vote of the Operating Committee. The Participants do not expect any distributions to be made to them except in two possible situations. One situation is if the Participants incur tax liabilities due to their

⁶³ SIFMA Letter at 13.

⁶⁴ DAG Letter at 4. *See also* STA Letter at 1.

⁶⁵ Plan, Appendix C, Section B.7(b)(v) at Appendix C-86.

⁶⁶ For a list of the DAG members, *see* SROs Announce Members of CAT Development Advisory Group, Consolidated Audit Trail (May 2, 2014), <http://www.catnmsplan.com/pastevents/p497794.pdf>; SROs Announce Members of CAT Development Advisory Group, Consolidated Audit Trail (Mar.25, 2013), <http://www.catnmsplan.com/pastevents/p229428.pdf>.

⁶⁷ SIFMA Letter at 19; DAG Letter at 5.

⁶⁸ KCG Letter at 5.

ownership of the Company. An example of tax liabilities being incurred would be if the Company generates profits. Those profits could be taxable to the Participants even if the profits are not distributed to the Participants. In such situation, the Participants could be taxed on amounts they have not received, in which case the Company would make distributions to the Participants, but only to the extent to permit each Participant to pay its incurred tax liability. As discussed, the Participants do not expect the Company to generate profits and rather expect the Company to operate on a break-even basis. The other situation that may require distributions to the Participants would be if the Company dissolves. In that situation, the Company's assets would be distributed first to the Company's creditors such as the Plan Processor or other third parties, second to a reserve for contingent or future liabilities (such as taxes), and third (assuming there are any amounts remaining) to the Participants in proportion to their Capital Accounts. Each Participant is expected to make a nominal contribution of cash or services to its Capital Account at the beginning of the operation of the CAT System. Therefore, any distribution to the Participant of an amount equal to its Capital Account would be limited to the nominal amount contributed. Other than these two limited situations, the Participants do not expect the Company to make any distributions.⁶⁹

The Participants believe that this description adequately describes the Participants' intent with regard to distributions, and, therefore, do not believe that an amendment of the Plan is necessary.

III. RETIREMENT OF SYSTEMS

A. General Timelines

1. Categorization of Industry Reporters as OATS Reporting Firms and OATS Exempt Firms

To facilitate a more rapid transition to the CAT and the retirement of FINRA's Order Audit Trail System ("OATS"), two commenters suggest that the Plan categorize Industry Reporters as OATS reporting firms and OATS exempt firms, rather than as large and small firms, for implementation purposes.⁷⁰ These commenters also recommend that voluntary reporting by Small Industry Members during the first year of Industry Member CAT reporting should be considered, if the OATS/non-OATS recommendation is not adopted.⁷¹

SEC Rule 613(a)(3) sets forth an implementation plan using the classifications of large and small firms, with extended timelines for smaller firms. The SEC permitted additional compliance time for smaller firms "given the fact that small broker-dealers may face greater

⁶⁹ Plan, Appendix C, Section B.7 at Appendix C-85.

⁷⁰ FIF Letter at 28; Thomson Reuters Letter at 3. Another commenter recommended extending the OATS exemption for qualifying small firms under FINRA Rule 7470 to order reporting on the CAT. Letter from Wachtel & Co. Inc. (July 18, 2016).

⁷¹ FIF Letter at 28; Thomson Reuters Letter at 3.

financial constraints in complying with Rule 613 as compared to larger broker-dealers.”⁷² In light of the framework set forth in SEC Rule 613 and the reasons for that framework, the Participants have based the implementation timeline on that framework.

The Participants believe, however, that SEC Rule 613 and the Plan already permit Small Industry Members to commence reporting to the CAT when large Industry Members begin reporting to the CAT on a voluntary basis. SEC Rule 613 and the Plan require Small Industry Members to report to the CAT within three years of the Effective Date of the Plan and other Industry Members (other than Small Industry Members) to report to the CAT within two years. Accordingly, Small Industry Members voluntarily may begin reporting within two years, rather than within three years.

In addition, the Participants believe accelerating the reporting requirements for all Small Industry Members that are OATS reporters to require them to begin reporting to the Central Repository two years after Plan approval when Large Industry Members are required to report may enable FINRA to retire OATS on a more expedited basis. Therefore the Participants will consider including in their Compliance Rules a requirement to accelerate reporting for Small Industry Members that are OATS reporters.

2. Plan Requirement to Retire Duplicative Reporting Systems

Four commenters recommend that the Plan include an explicit requirement for the Participants to retire redundant reporting systems, and set forth a prioritized timetable for retiring such systems.⁷³ For example, one such commenter recommends establishing a fixed date for retiring duplicative systems, or in the alternative, requiring the automatic retirement of such systems once the CAT reaches certain performance metrics.⁷⁴

The Participants recognize the importance of eliminating duplicative reporting requirements and are committed to the retirement of such systems as rapidly as possible. In addition, in contrast to one comment,⁷⁵ the Participants believe that they are incented to eliminate such systems as the Participants face significant costs in running such systems, and to the extent that such systems are extraneous for regulatory purposes, the Participants would desire to cease their operation. Nevertheless, the Participants do not believe that they can commit to retiring any duplicative systems by a designated date as any system retirement depends on a variety of factors. For example, the Participants would need to ensure that the CAT Data is sufficiently extensive and of high quality before they could rely on it for regulatory oversight purposes. In addition, as a practical matter, the Participants would be unable to retire any of their duplicative systems until any rule changes related to such systems retirements are approved by the SEC. Furthermore, the Participants note that the elimination of potentially duplicative requirements established by the SEC (*e.g.*, SEC Rule 17a-25 regarding electronic submission of securities

⁷² Rule 613 Adopting Release at 45749.

⁷³ SIFMA Letter at 4-5; Fidelity Letter at 5; DAG Letter at 2; KCG Letter at 2-3. *See also* STA Letter at 1.

⁷⁴ Fidelity Letter at 5.

⁷⁵ SIFMA Letter at 5.

transactions and SEC Rule 13h-1 regarding large traders) are outside the Participants' purview, although Participant systems related to such SEC Rules are not.

3. Accelerated Timeline for Analyzing Duplicative Systems

One commenter recommends that the Participants accelerate the timeline for the Participants to identify their existing rules and systems that are duplicative of CAT requirements.⁷⁶ Specifically, this commenter urges the Participants to complete their preliminary gap analyses now based on the Plan's technical requirements and to include their final analysis with the publication of the Technical Specifications, and recommends that any identified gaps be included in the CAT at the outset. Another commenter also recommends that, to facilitate the retirement of duplicative systems, the CAT should be designed in the first instance to include all data field information necessary to allow prompt elimination of such redundant systems.⁷⁷

As discussed above, the Participants recognize the importance of eliminating duplicative reporting requirements and are committed to the retirement of such systems as rapidly as possible.⁷⁸ To expedite the retirement of duplicative systems, the Participants with duplicative systems have completed gap analyses for systems and rules identified for retirement (in full or in part), and confirm that data that would need to be captured by the CAT to support retirement of these systems will be included in the CAT. Specifically, the relevant Participants have evaluated each of the following systems/rules: FINRA's OATS Rules (7400 Series),⁷⁹ Consolidated Options Audit Trail System ("COATS") and associated rules, NYSE Rule 410(b), PHLX Rule 1022, CBOE Rule 8.9, electronic blue sheets ("EBS") and associated rules, C2 Rule 8.7 and CHX BrokerPlex reporting (Rule 5). In addition, a broader review of the Participants' rules intended to identify any other impact that the CAT may have on the Participants' rules and systems generally is ongoing. The Participants also note that descriptions of OATS and EBS gap analyses created on behalf of the Participants are available for public review on the Plan website.⁸⁰ Moreover, the Participants have worked to keep these gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot⁸¹ and ATS order book changes,⁸² in the gap analyses. As soon as the Plan Processor is selected, the Participants will work with the Plan Processor and the industry to develop detailed Technical Specifications that ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.

⁷⁶ FIF Letter at 24-25, 27 and 29-30. *See also* DAG Letter at 2 and STA Letter at 1.

⁷⁷ FIF Letter at 27; SIFMA Letter at 5.

⁷⁸ For example, although SEC Rule 613 does not require the reporting of OTC Equity Securities initially, the Participants have proposed to require CAT reporting related to OTC Equity Securities to facilitate the elimination of OATS. Plan, Appendix C, Section C.9 at Appendix C-97-99.

⁷⁹ This review also would cover the rules of other Participants that incorporate FINRA's OATS requirements. *See, e.g.*, NASDAQ Rule 7000A Series; BX Rule 6950 Series; PHLX Rule 3400 Series; NYSE Rule 7400 Series; NYSE Arca Equities Rule 7400 Series; NYSE MKT Rule 7400 Series.

⁸⁰ *See* EBS-CAT Gap Analysis and OATS-CAT Gap Analysis, Consolidated Audit Trail, <http://www.catnmsplan.com/gapanalyses/index.html>.

⁸¹ *See* FINRA Rules 6191(b) and 7440.

⁸² *See* FINRA Rule 4554.

Accordingly, to reflect these ongoing efforts, the Participants propose to accelerate the proposed timelines for analyzing duplicative rules and systems. Specifically, the Participants propose to amend Section 9 of Appendix C of the Plan as detailed below. However, the Participants note that the proposed timelines set forth below are based on the Plan Processor’s appropriate and timely implementation of the CAT and the CAT Data being sufficient to meet the surveillance needs of each Participant.

<u>Milestone</u>	<u>Projected Completion Date</u>
Identification of Duplicative Rules and Systems	
<p>Each Participant will initiate an analysis of its rules and systems to determine which require information that is duplicative of the information available to the Participants through the Central Repository. Examples of Participants’ rules to be reviewed include:</p> <ul style="list-style-type: none"> • The Participants’ rules that implement the exchange-wide Consolidated Options Audit Trail System (e.g., CBOE Rule 6.24, etc.) • FINRA rules that implement the Order Audit Trail System (OATS) including the relevant rules of the NASDAQ Stock Market, NASDAQ [OMX] BX, NASDAQ [OMX] PHLX, New York Stock Exchange, NYSE MKT, and NYSE ARCA • Option exchange rules that require the reporting of transactions in the equity underlier for options products listed on the options exchange (e.g., PHLX Rule 1022, portions of CBOE Rule 8.9, etc.) 	<p>[Each Participant has begun reviewing its existing rulebooks and is waiting for the publication of the final reporting requirements to the Central Repository.] Each Participant should complete its analysis <u>within nine (9) to twelve (12) months after the SEC’s approval of the CAT NMS Plan</u> [within twelve (12) months after Industry Members (other than Small Industry Members) are required to begin reporting data to the Central Repository] or, if such Participant determines sufficient data is not available to complete such analysis by such date, a subsequent date needs to be determined by such Participant based on the availability of such data.</p>
Identification of Partially Duplicative Rules and Systems	
<p>Each Participant will initiate an analysis of its rules and systems to determine which rules and/ or systems require information that is partially</p>	<p>[Each Participant has begun reviewing its existing rulebooks and is waiting for publication of the final reporting requirements to the Central</p>

<p>duplicative of the information available to the Participants through the Central Repository. The analysis should include a determination as to (1) whether the duplicative information available in the Central Repository should continue to be collected by the Participant; (2) whether the duplicative information made available in the Central Repository can be used by the Participant without degrading the effectiveness of the Participant’s rules or systems; and (3) whether the non-duplicative information should continue to be collected by the Participant or, alternatively, should be added to information collected by the Central Repository.</p> <p>Examples of Participants’ rules to be reviewed include:</p> <ul style="list-style-type: none"> • Options exchange rules that require the reporting of large options positions (e.g., CBOE Rule 4.13, etc.) • NYSE Rule 410B which requires the reporting of transactions effected in NYSE listed securities by NYSE members which are not reported to the consolidated reporting systems • Portions of CBOE Rule 8.9 concerning position reporting details 	<p>Repository. Upon publication of the Technical Specifications, e]Each Participant should complete its analysis <u>within nine (9) to twelve (12) months after the SEC’s approval of the CAT NMS Plan</u> [within eighteen (18) months after Industry Members (other than Small Industry Members) are required to begin reporting data to the Central Repository] or, if such Participant determines sufficient data is not available to complete such analysis by such date, a subsequent date needs to be determined by such Participant based on the availability of such data.</p>
<p>Identification of Non-Duplicative Rules or Systems related to Monitoring Quotes, Orders and Executions</p>	
<p>Each Participant will initiate an analysis of its rules and systems to determine which of the Participant’s rules and systems related to monitoring quotes, orders, and executions provide information that is not rendered duplicative by the consolidated audit trail. Each Participant</p>	<p>Each Participant should complete its analysis <u>within nine (9) to twelve (12) months after the SEC’s approval of the CAT NMS Plan</u> [within eighteen (18) months after Industry Members (other than Small Industry Members) are required to begin reporting data to the</p>

<p>must analyze (1) whether collection of such information should continue to be separately collected or should instead be incorporated into the consolidated audit trail; (2) if still appropriate, whether such information should continue to be separately collected or should instead be incorporated into the consolidated audit trail.; and (3) if no longer appropriate, how the collection of such information could be efficiently terminated, the steps the Participants propose to take to seek Commission approval for the elimination of such rules and systems (or components thereof), and a timetable for such elimination, including a description of the phasing-in of the consolidated audit trail and phasing-out of such existing rules and systems (or components thereof).</p>	<p>Central Repository] or, if such Participant determines sufficient data is not available to complete such analysis by such date, a subsequent date needs to be determined by such Participant based on the availability of such data.</p>
<p style="text-align: center;">Identification of Participant Rule and System Changes Due to Elimination or Modification of SEC Rules</p>	
<p>To the extent the SEC eliminates SEC rules that require information that is duplicative of information available through the Central Repository, each Participant will analyze its rules and systems to determine whether any modifications are necessary (e.g., delete references to outdated SEC rules, etc.) to support data requests made pursuant to such SEC rules. Examples of rules the SEC might eliminate or modify as a result of the implementation of CAT include:</p> <ul style="list-style-type: none"> • SEC Rule 17a-25 which requires brokers and dealers to submit electronically to the SEC information on Customers and firms securities trading 	<p>Each Participant should complete its analysis within three (3) months after the SEC approves the deletion or modification of an SEC rule related to the information available through the Central Repository.</p> <p>The Participants will coordinate with the SEC regarding modification of the CAT NMS Plan to include information sufficient to eliminate or modify those Exchange Act rules or systems that the SEC deems appropriate.</p> <p>With respect to SEC Rule 17a-25, such coordination will include, among other things, consideration of EBS data elements and asset classes that would need to be included in the Plan, as well as</p>

<ul style="list-style-type: none"> SEC Rule 17h-1 concerning the identification of large traders and the required reporting obligations of large traders 	<p>the timing of when all Industry Members will be subject to the Plan.⁸³</p> <p>Based on preliminary industry analyses, broker-dealer large trader reporting requirements under SEC Rule [17h-1] <u>13h-1</u> could be eliminated via the CAT. The same appears true with respect to broker-dealer <u>large trader</u> recordkeeping. Large trader reporting responsibilities on Form 13H and self-identification would not appear to be covered by the CAT.⁸⁴</p>
<p>Participant Rule Changes to Modify or Eliminate Participant Rules</p>	
<p>Each Participant will prepare appropriate rule change filings to implement the rule modifications or deletions that can be made based on the Participant’s analysis of duplicative or partially duplicative rules. The rule change filing should describe the process for phasing out the requirements under the relevant rule.</p>	<p>Each Participant will file <u>with</u> [to] the SEC the relevant rule change filing to eliminate or modify its rules within six (6) months of the Participant’s determination that such modification or deletion is appropriate.</p>
<p>Elimination (including any Phase-Out) of Relevant Existing Rules and Systems</p>	
<p>After each Participant completes the above analysis of its rules and systems, each Participant will analyze the most appropriate and expeditious timeline and manner for eliminating such rules and systems.</p>	<p>Upon the SEC’s approval of relevant rule changes, each Participant will implement such timeline. One consideration in the development of these timelines will be when the quality of CAT Data will be sufficient to meet the surveillance needs of the Participant (i.e., to sufficiently replace current reporting data) before existing rules and systems can be eliminated.</p>

⁸³ See SEC Rule 613 – Consolidated Audit Trail (CAT) Preliminary EBS-CAT Gap Analysis, available at <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p450537.pdf>.

⁸⁴ See FIF CAT WG: Preliminary Large Trader Rule (Rule 13h-1) – CAT (Rule 613) Gap Analysis (Feb. 11, 2014), available at <https://fif.com/fif-working-groups/consolidated-audit-trail/member-resources/current-documents?download=1221:february-11-2014-fif-cat-wg-preliminary-large-trader-rule-rule-13h-1-cat-rule-613-gap-analysis&start=35>.

[Additions underlined; deletions bracketed]

4. Exemption for Individual CAT Reporters from Duplicative Reporting

Five commenters recommend that the Plan exempt individual Industry Member CAT Reporters that meet a specified data reporting quality threshold (*e.g.*, a retirement error rate) from duplicative reporting obligations.⁸⁵ In addition, two commenters recommend that the CAT be designed to facilitate such individual exemptions.⁸⁶ For example, one commenter recommends that the CAT be designed at the outset to include certain features and functions that will allow the Participants to extract data stored in the CAT reported by exempted CAT Reporters to use in combination with data still being submitted by non-exempt CAT Reporters via legacy systems.

The proposal to exempt individual Industry Member CAT Reporters from duplicative reporting obligations if they meet a specified data reporting quality threshold implicates the rules of the individual Participants and raises the practical issues discussed above in Section 2. Therefore, the Participants do not intend to recommend that the SEC amend the Plan to incorporate such an exemption from the individual Participants' rules.

Nevertheless, the Participants have been exploring whether the CAT or the duplicative systems would require additional functionality to permit cross-system regulatory analyses that would minimize the duplicative reporting obligations. FINRA remains committed to working with the Plan Processor to integrate CAT Data with data collected by OATS if it can be accomplished in an efficient and cost effective manner.⁸⁷ FINRA noted in the Plan that in order to consider exempting firms from the OATS requirements (1) the data submitted to the CAT must be of sufficient quality for surveillance purposes; and (2) FINRA must be able to integrate CAT Data with the remaining OATS data in a way that permits it to continue to perform its surveillance obligations (*i.e.*, FINRA can follow the path of an order, where certain order events are reported to the CAT and others are reported to OATS). FINRA has had discussions with the SEC staff regarding exempting firms from OATS if the firm is successfully reporting to CAT in a manner that allows FINRA to conduct its surveillance as if the Reporter was still reporting to OATS. Nevertheless, FINRA anticipates that CAT Reporters who are FINRA members and report to OATS will need to report to both OATS and the CAT for some period until FINRA can ensure that those two factors are satisfied. As noted above, FINRA believes that requiring all current OATS reporters to submit data to the Central Repository within two years after the SEC approves the Plan may reduce the amount of time that OATS and CAT will need to operate concurrently and may help facilitate the prompt retirement of OATS.

⁸⁵ KCG Letter at 3; FIF Letter at 25-27, 29; DAG Letter at 2; Bloomberg Letter at 8; SIFMA Letter at 7-8. *See also* STA Letter at 1.

⁸⁶ SIFMA Letter at 8; FIF Letter 28.

⁸⁷ *See* Plan, Appendix C.9 at Appendix C-94-99.

5. Six Month Trial Period

Three commenters recommend the use of a trial period of no more than six months after the CAT commences operation during which Industry Members would report to duplicative legacy systems as well as the CAT. During this trial period, the only regulatory reporting sources of record would be the legacy reporting systems (*e.g.*, OATS). In addition, during this period, there would be no penalties, archiving requirements or regulatory inquiries related to CAT reporting.⁸⁸

The Participants recognize the concerns regarding the potential for disciplinary actions during the commencement of reporting to the CAT when, despite good faith efforts, reporting errors may develop due to the lack of experience with the CAT. Accordingly, the Participants will take into consideration the lack of experience with the CAT when evaluating any potential regulatory concerns with CAT reporting during the first months after such reporting is required.

In addition, the Participants intend to work together with the broker-dealer CAT Reporters to facilitate their CAT reporting. For example, the Participants anticipate that the CAT Reporters' preparations for reporting to the CAT (*e.g.*, use of the CAT's testing environments) will provide an opportunity for the CAT Reporters to gain experience with the CAT. Moreover, the Plan Processor will provide the CAT Reporters with a variety of resources to assist them during onboarding and once CAT reporting begins, including user support and a help desk.⁸⁹

B. Implementation and Development

1. Inclusion of Existing Surveillance Methods

One commenter recommends that the CAT should be designed from the outset to include the ability to implement all of the surveillance methods and functions currently used by the Participants (*e.g.*, OATS, EBS and COATS).⁹⁰ As a preliminary matter, the Participants note that the CAT is not intended to be the sole source of surveillance for each Participant, and, therefore, would not cover all surveillance methods currently employed by the Participants. With the goal of using the CAT rather than other duplicative systems for surveillance and other regulatory purposes, however, the Participants have provided the Bidders with specific use cases that describe the surveillance and investigative scenarios that the Participants and the SEC would require for the CAT. During the bidding process, each Bidder has been required to demonstrate its ability to meet these criteria. To date, the Participants have had multiple discussions with the Bidders regarding the query capabilities that each Bidder would provide, and the Participants believe that the selected Plan Processor will have the capability to provide the necessary surveillance methods and functions to allow for the retirement of duplicative systems.

⁸⁸ FIF Letter at 25, 27-28; FSR Letter at 10; ; Letter from Manisha Kimmel, Thomson Reuters, to Brent J. Fields, SEC (July 18, 2016) ("Thomson Reuters Letter") at 2.

⁸⁹ Plan, Appendix D, Section 10 at Appendix D-35-41.

⁹⁰ SIFMA Letter at 8.

2. Moratorium on Changes to Duplicative Systems

Five commenters recommend that enhancements to existing, duplicative regulatory reporting should cease upon the launch of the CAT, and that any new proposed change to those be incorporated into the CAT instead.⁹¹ The Participants agree with this goal, and plan to minimize the number of changes that are rolled out to duplicative systems to the extent possible. The Participants, however, cannot commit to making no changes to the duplicative systems as some changes may be necessary before these systems are retired. For example, changes to these duplicative systems may need to be made to address, for example, SEC initiatives, new order types or security-related changes.

⁹¹ SIFMA Letter at 5; KCG Letter at 3; FIF Letter at 27, 29; Thomson Reuters Letter at 5; Fidelity Letter at 5.