

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100866; File No. SR-GEMX-2024-29)

August 28, 2024

Self-Regulatory Organizations; Nasdaq GEMX, LLC.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish Fees Related to Certain Prospective Costs of the National Market System Plan Governing the Consolidated Audit Trail

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2024, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for Industry Members³ related to reasonably budgeted CAT costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) for the period from July 16, 2024 through December 31, 2024, as described further below.

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Nasdaq Rule General 7(u) (GEMX General 7 incorporates The Nasdaq Stock Market LLC Rule General 7 by reference); see also Section 1.1 of the CAT NMS Plan. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and/or the CAT Compliance Rule. Nasdaq Rule General 7 (Consolidated Audit Trail Compliance).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification or execution.⁴ On November 15, 2016, the Commission approved the CAT NMS Plan.⁵ Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for CAT LLC to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.⁶ The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”). On September 6, 2023, the Commission approved the CAT Funding Model after concluding that the model was reasonable

⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 Fed. Reg. 45722 (Aug. 1, 2012).

⁵ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁶ Section 11.1(b) of the CAT NMS Plan.

and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁷

The CAT Funding Model provides a framework for the recovery of the costs to create, develop and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees); and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs (“CAT Fees”).⁸

Under the CAT Funding Model, Participants, CEBBs and CEBSs are subject to fees designed to cover the ongoing budgeted costs of the CAT, as determined by the Operating Committee. “The Operating Committee will establish fees (‘CAT Fees’) to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants (‘Prospective CAT Costs’).”⁹ In establishing a CAT Fee, the Operating Committee will calculate a “Fee Rate” for the relevant period. Then, for each month in which a CAT Fee is in effect, each CEBB and CEBS would be required to pay the fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where

⁷ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 Fed. Reg. 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁸ Under the CAT Funding Model, the Operating Committee may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing only establishes CAT Fee 2024-1 related to reasonably budgeted CAT costs for the period from July 16, 2024 through December 31, 2024 as described herein; it does not address any other potential CAT Fees related to CAT costs. Any such other CAT Fee will be subject to a separate fee filing. In addition, under the CAT Funding Model, the Operating Committee may establish one or more Historical CAT Assessments. Section 11.3(b) of the CAT NMS Plan. This filing does not address any Historical CAT Assessments.

⁹ Section 11.3(a) of the CAT NMS Plan.

the fee for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate.¹⁰

The CAT Fees to be paid by CEBBs and CEBSs are designed to contribute toward the recovery of two-thirds of the budgeted CAT costs for the relevant period.¹¹ The CAT Funding Model is designed to require that the Participants contribute to the recovery of the remaining one-third of the budgeted CAT costs.¹² Participants would be subject to the same Fee Rate as CEBBs and CEBSs.¹³ While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,¹⁴ CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.¹⁵ Accordingly, this filing does not address Participant CAT fees as they are described in the CAT NMS Plan.¹⁶

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail below) CAT Fee 2024-1 to recover the reasonably budgeted CAT costs for July 16, 2024 through December 31, 2024, in accordance with the CAT Funding Model. To implement this fee on behalf of CAT LLC, the CAT NMS Plan requires the Participants to “file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as ‘Consolidated Audit Trail Funding Fees.’”¹⁷ The Plan further states that “[o]nce the Operating Committee has approved such Fee

¹⁰ In approving the CAT Funding Model, the Commission stated that, “[t]he proposed recovery of Prospective CAT Costs is appropriate.” CAT Funding Model Approval Order at 62651.

¹¹ Section 11.3(a)(iii)(A) of the CAT NMS Plan.

¹² Section 11.3(a)(ii)(A) of the CAT NMS Plan.

¹³ Section 11.3(a)(ii) of the CAT NMS Plan.

¹⁴ Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

¹⁵ CAT Funding Model Approval Order at 62659.

¹⁶ See Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

¹⁷ Section 11.1(b) of the CAT NMS Plan.

Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate.”¹⁸

Accordingly, the purpose of this filing is to implement a CAT Fee on behalf of CAT LLC for Industry Members, referred to as CAT Fee 2024-1, in accordance with the CAT NMS Plan.

(1) CAT Executing Brokers

CAT Fee 2024-1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁹ The CAT NMS Plan defines a “CAT Executing Broker” to mean:

- (a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.²⁰

¹⁸ Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

¹⁹ In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion, the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of *executed* equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from the exchanges and FINRA’s equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. CAT Funding Model Approval Order at 62629.

²⁰ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBSs may, but are not required to, pass-through their CAT Fees to their clients, who may, in turn, pass their fees to their clients until they are

The following fields of the Participant Technical Specifications indicate the CAT

Executing Brokers for the transactions executed on an exchange:

Equity Order Trade (EOT)²¹

#	Field Name	Data Type	Description	Include Key
12.n.8/ 13.n.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

Option Trade (OT)²²

#	Field Name	Data Type	Description	Include Key
16.n.13 / 17.n.13	member	Member Alias	The identifier for the member firm that is responsible for the order	R

In addition, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange:

TRF/ORF/ADF Transaction Data Event (TRF)²³

#	Field Name	Data Type	Description	Include Key
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imposed ultimately on the account that executed the transaction. *See* CAT Funding Model Approval Order at 62649.

²¹ *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r21 (Apr. 15, 2024), https://www.catnmsplan.com/sites/default/files/2024-04/04.15.2024-CAT_Reporting_Technical_Specifications_for_Participants_4.1.0-r21.pdf (“CAT Reporting Technical Specifications for Plan Participants”).

²² *See* Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

²³ *See* Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

(2) Calculation of Fee Rate 2024-1

The Operating Committee determined the Fee Rate to be used in calculating CAT Fee 2024-1 (“Fee Rate 2024-1”) by dividing the reasonably budgeted CAT costs (“Budgeted CAT Costs 2024-1”) for the period from July 16, 2024 through December 31, 2024 (“CAT Fee 2024-1 Period”) by the reasonably projected total executed share volume of all transactions in Eligible Securities for the four-month recovery period, as discussed in detail below.²⁴ Based on this calculation, the Operating Committee has determined that Fee Rate 2024-1 would be \$0.0001043598251997246 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000035 per executed equivalent share that will be assessed to CEBBs and CEBSs, as also discussed in detail below.

(A) CAT Fee 2024-1 Period

CAT LLC proposes to implement CAT Fee 2024-1 as the first CAT Fee related to Prospective CAT Costs. CAT LLC proposes to commence CAT Fee 2024-1 during the year, rather than at the beginning of the year. Accordingly, CAT Fee 2024-1 “would be calculated as described in paragraph II” of Section 11.3(a)(i)(A) of the CAT NMS Plan, which states that “[d]uring each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of

²⁴ Section 11.3(a)(i) of the CAT NMS Plan.

the year.”²⁵ For CAT Fee 2024-1, the reasonably budgeted CAT costs for “the remainder of the year” are the reasonably budgeted CAT costs from July 16, 2024 through December 31, 2024. This period is referred to as the CAT Fee 2024-1 Period. Such costs would be recovered over a four-month period, where the first invoices are sent in October 2024 based on transactions in September 2024.

(B) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities will be counted as 0.01 executed equivalent share.²⁶

(C) Budgeted CAT Costs 2024-1

The CAT NMS Plan states that “[t]he budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to

²⁵ Section 11.3(a)(i)(A)(II) of the CAT NMS Plan.

²⁶ Section 11.3(a)(i)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan.” CAT Funding Model Approval Order at 62640.

Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.”²⁷ Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to “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 the prudent operation of the Company.” Section 11.1(a)(i) of the CAT NMS Plan further states that:

[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

In accordance with the requirements under the CAT NMS Plan, the Operating Committee approved an annual budget for 2024 for CAT LLC in December 2023 (“Original 2024 Budget”).²⁸ In August 2024, the Operating Committee approved an updated budget for 2024 (“Updated 2024 Budget”).²⁹ The Updated 2024 Budget includes actual costs for each category for the months of January through July 2024, with estimated costs for the remaining months of 2024. The Operating Committee also approved the budgeted CAT costs for the CAT Fee 2024-1 Period (*i.e.*, Budgeted CAT Costs 2024-1), which are a subset of the costs set forth in the Updated 2024 Budget.

²⁷ Section 11.3(a)(i)(C) of the CAT NMS Plan.

²⁸ The Original 2024 Budget is available on the CAT website (<https://www.catnmsplan.com/sites/default/files/2024-07/07.09.2024-CAT%20LLC-2024-Financial-and-Operating-Budget.pdf>).

²⁹ The Updated 2024 Budget is available on the CAT website (https://www.catnmsplan.com/sites/default/files/2024-08/07.31.24-CAT-LLC-2024-Financial_and_Operating-Budget.pdf).

As described in detail below, the Budgeted CAT Costs 2024-1 would be \$138,476,925. CEBBs collectively will be responsible for one-third of the Budgeted CAT Costs 2024-1 (which is \$46,158,975), and CEBSs collectively will be responsible for one-third of Budgeted CAT Costs 2024-1 (which is \$46,158,975).

The following describes in detail Budgeted CAT Costs 2024-1 for the CAT Fee 2024-1 Period. The following cost details are provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing the following:

the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.³⁰

Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

The following table breaks down Budgeted CAT Costs 2024-1 into the categories set forth in Section 11.3(a)(iii)(B) of the CAT NMS Plan.³¹

Budget Category	Budgeted CAT Costs 2024-1*
Capitalized Developed Technology Costs**	\$4,101,990
Technology Costs:	\$99,728,258
Cloud Hosting Services	\$76,278,426
Operating Fees	\$14,008,947.50
CAIS Operating Fees	\$9,278,384.50
Change Request Fees	\$162,500
Legal	\$4,484,554.50
Consulting	\$652,623
Insurance	\$1,342,345
Professional and administration	\$428,544.50

³⁰ Section 11.3(a)(iii)(B) of the CAT NMS Plan.

³¹ Note that costs and related cost calculations provided in this filing may reflect minor variations from the budgeted costs due to rounding.

Public relations	\$43,225
Subtotal	\$110,781,540
Reserve	\$27,695,385
Total Budgeted CAT Costs 2024-1	\$138,476,925

* Budgeted CAT Costs 2024-1 described in this table of costs were determined based on an analysis of a variety of factors, including historical costs/invoices, estimated costs from respective vendors/service providers, contractual terms with vendors/service providers, anticipated service levels and needs, and discussions with vendors and Participants.

** The non-cash amortization of these capitalized developed technology costs to be incurred during the CAT Fee 2024-1 Period have been appropriately excluded from the above table.³²

To the extent that CAT LLC enters into notes with Participants or others to pay costs incurred during the period from July 16, 2024 through December 31, 2024, CAT LLC will use the proceeds from the CAT Fee 2024-1 and the related Participant CAT fees to repay such notes.

(i) Technology Costs – Cloud Hosting Services

(a) Description of Cloud Hosting Services Costs

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the cloud hosting services costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$76,278,426 in technology costs for cloud hosting services for the CAT Fee 2024-1 Period. The technology costs for cloud hosting services represent costs reasonably budgeted to be incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. (“AWS”), during the CAT Fee 2024-1 Period.

In the agreement between CAT LLC and the Plan Processor for the CAT (“Plan Processor Agreement”), FINRA CAT, LLC (“FCAT”), AWS was named as the subcontractor to

³² With respect to certain costs that were “appropriately excluded,” such excluded costs relate to the amortization of capitalized technology costs, which are amortized over the life of the Plan Processor Agreement. As such costs have already been otherwise reflected in the filing, their inclusion would double count the capitalized technology costs. In addition, amortization is a non-cash expense.

provide cloud hosting services. Under the Plan Processor Agreement, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the expected volume of data, the breadth of services provided and market rates for similar services. It is anticipated that AWS will provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools during the CAT Fee 2024-1 Period. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools), as well as various environments for CAT, such as development, performance testing, test, and production environments. AWS will perform cloud hosting services for both the CAT transaction database as well as the CAT Customer and Account Information System ("CAIS") during the CAT Fee 2024-1 Period.

The cost for AWS cloud services for the CAT is a function of the volume of CAT Data. The greater the amount of CAT Data, the greater the cost of AWS services to CAT LLC. During the CAT 2024-1 Period, it is expected that AWS will provide cloud hosting services for volumes of CAT Data far in excess of the volume predictions set forth in the CAT NMS Plan. The CAT NMS Plan states, when all CAT Reporters are submitting their data to the CAT, it "must be sized to receive[,] process and load more than 58 billion records per day,"³³ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁴

³³ Appendix D-4 of the CAT NMS Plan at n.262.

³⁴ Appendix D-5 of the CAT NMS Plan.

In contrast with those estimates, the Q1 2024 data volumes, which averaged 577 billion events per day, were up 45% compared to Q1 2023, which averaged 399 billion events per day, with peak volumes recorded on April 19, 2024 of 746 billion events. Even higher peak volumes were recorded in July and August 2024.

CAT LLC estimates that the budget for cloud hosting services costs during the CAT Fee 2024-1 Period will be approximately \$76,278,426. The budget for cloud hosting services costs during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget.

Specifically, this estimate was calculated by adding the budgeted amounts for cloud hosting services costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the cloud hosting services costs incurred in July 2024 (as CAT Fee 2024-1 Period began half way through July, on July 16, 2024).³⁵

CAT LLC estimated the budget for the cost for cloud hosting services for the CAT Fee 2024-1 Period based on an assumption of 30% annual year-over-year volume growth for the transaction database and an assumption of 5% annual year-over-year volume growth for CAIS. CAT LLC determined these growth assumptions in coordination with FCAT based on an analysis of a variety of existing data and alternative growth scenarios. In addition, the budget for cloud hosting services for the CAT Fee 2024-1 Period includes a budget for the cost of re-processing data as approved by the CAT Operating Committee.³⁶ The budget for re-processing data was based on expenditures for re-processing in prior years. This process for estimating the budget for cloud hosting services costs for the CAT Fee 2024-1 Period is the same process by

³⁵ This calculation is $(\$38,132,441 + \$43,919,730) - \$5,773,745 = \$76,278,426$.

³⁶ Appendix D-19 of the CAT NMS Plan states that “[i]f corrections are received after T+5, Participants’ regulatory staff and the SEC must be notified and informed as to how re-processing will be completed. The Operating Committee will be involved with decisions on how to re-process the data; however, this does not relieve the Plan Processor of notifying the Participants’ regulatory staff and the SEC.”

which CAT LLC estimated the cloud hosting services costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for cloud hosting services of \$71,384,109 for the first two quarters of 2024.³⁷ The actual costs for cloud hosting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$66,737,810.³⁸ There is only an approximate 7% difference between the estimate and actuals for cloud hosting services costs. Accordingly, CAT LLC believes that the process for estimating the budgeted cloud hosting services costs for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for cloud hosting services costs from the prior CAT Fee filing. CAT LLC's proposed annual budget for cloud hosting services costs for 2024 decreased about 3.5% from the Original 2024 Budget to the Updated 2024 Budget, from \$154,624,108 to \$148,789,981. Although there were expected cost increases related to data volume growth and the associated compute and storage of the increased data levels, as well as from additional capacity for OTQT systems that were added to meet the performance standards set forth in the requirements of the recent SEC exemptive order from November 2023,³⁹ these cost increases were offset by a variety of cost reduction efforts related to compute efficiencies, the implementation of single pass linker related to options quotes, and the implementation of compute and other efficiencies related to CAIS. Without such cost management efforts, the budgeted costs for cloud hosting services would have increased by approximately 15%, rather than decreased. Correspondingly, the proposed budget for cloud hosting services costs for the

³⁷ This calculation is $\$33,217,468 + \$38,166,641 = \$71,384,109$.

³⁸ This calculation is $\$30,343,917 + \$36,393,893 = \$66,737,810$.

³⁹ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 Fed. Reg. 77128 (Nov. 8, 2023).

third and fourth quarters of 2024 did not change in a material way from the Original 2024 Budget to the Updated 2024 Budget. There was only an approximate 1% decrease from \$83,239,999 in the Original 2024 Budget⁴⁰ to \$82,052,171 in the Updated 2024 Budget for the third and fourth quarters of 2024.⁴¹

(ii) Technology Costs – Operating Fees

(a) Description of Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$14,008,947.50 in technology costs for operating fees for the CAT Fee 2024-1 Period. Operating fees are those fees paid by CAT LLC to FCAT as the Plan Processor to operate and maintain the CAT and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management as required by the CAT NMS Plan. Operating fees also include market data provider costs, as discussed below.

Plan Processor: FCAT. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT a negotiated monthly fixed price for the operation of the CAT. This fixed price contract was negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, taking into consideration a variety of factors, including the breadth of services provided and market rates for

⁴⁰ This calculation is $\$39,961,511 + \$43,278,488 = \$83,239,999$.

⁴¹ This calculation is $\$38,132,441 + \$43,919,730 = \$82,052,171$.

similar types of activity. It is anticipated that FCAT will provide a variety of services to the CAT during the CAT Fee 2024-1 Period, including the following:

- Provide the CAT-related functions and services as the Plan Processor as required by SEC Rule 613 and the CAT NMS Plan in connection with the operation and maintenance of the CAT;
- Address compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provide support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assist with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversee the security of the CAT;
- Monitor the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provide support to subcontractors under the Plan Processor Agreement;
- Provide support in discussions with the Participants and the SEC and its staff;
- Operate the FINRA CAT Helpdesk;
- Facilitate communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administer the CAT website and all of its content;
- Maintain cyber security insurance related to the CAT; and
- Provide technical support and assistance with connectivity, data access, and user support, including the use of CAT Data and query tools, for Participants and the SEC staff.

CAT LLC calculated [*sic*] the budget for the FCAT technology costs for operating fees for the CAT Fee 2024-1 Period based on the recurring monthly operating fees under the Plan Processor Agreement.

Market Data Provider: Exegy. It is anticipated that the operating fees costs for the CAT Fee 2024-1 Period will include costs related to the receipt of certain market data for the CAT

pursuant to an agreement between FCAT and Exegy Incorporated (“Exegy”). CAT LLC determined that Exegy would provide market data that included all data elements required by the CAT NMS Plan,⁴² and that the fees were reasonable and in line with market rates for the market data received. All costs under the contract would be treated as a direct pass through cost to CAT LLC. CAT LLC estimated the budget for the costs for Exegy for the CAT Fee 2024-1 Period based on the monthly rate set forth in the agreement between Exegy and FCAT.

Operating Fee Estimates. CAT LLC estimates that the budget for operating fees during the CAT Fee 2024-1 Period will be approximately \$14,008,947.50. The budget for operating fees during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual operating fees incurred in July 2024 (as CAT Fee 2024-1 Period began half way through July, on July 16, 2024).⁴³

As discussed above, CAT LLC estimated the budget for the operating fees during the CAT Fee 2024-1 Period based on monthly rates set forth in the Plan Processor Agreement and the agreement with Exegy. CAT LLC also recognized that the operating fees are generally consistent throughout the year. This process for estimating the budget for the operating fees for the CAT Fee 2024-1 Period is the same process by which CAT LLC estimated the operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for operating fees of \$13,558,875 for the first two quarters of 2024.⁴⁴ The actual costs for operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$12,608,540.⁴⁵

⁴² See Section 6.5(a)(ii) of the CAT NMS Plan.

⁴³ This calculation is $(\$6,907,383 + \$904,664) + (\$6,907,383 + \$440,748) - \$1,151,230.50 = \$14,008,947.5$.

⁴⁴ This calculation is $\$6,726,747 + \$6,832,128 = \$13,558,875$.

⁴⁵ This calculation is $\$6,702,506 + \$5,906,034 = \$12,608,540$.

There was an approximate 7% decrease from estimates to actuals for the first two quarters. Accordingly, CAT LLC believes that the process for estimating the budgeted operating fees for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the operating fees from the Original 2024 Budget. CAT LLC's proposed annual budget for operating fees for 2024 increased from \$27,223,132 to \$27,768,718⁴⁶ from the Original 2024 Budget to the Updated 2024 Budget, and the proposed budget for operating fees for the third and fourth quarters of 2024 increased from \$13,664,256 in the Original 2024 Budget⁴⁷ to \$15,160,178 in the Updated 2024 Budget.⁴⁸ This increase is due to a cyber insurance adjustment.

(iii) Technology Costs – CAIS Operating Fees

(a) Description of CAIS Operating Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the CAIS operating fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$9,278,384.50 in technology costs for CAIS operating fees for the CAT Fee 2024-1 Period. CAIS operating fees represent the fees paid to FCAT for services provided with regard to the operation and maintenance of CAIS, and to

⁴⁶ This calculation is $\$26,423,306 + \$1,345,412 = \$27,768,718$.

⁴⁷ This calculation is $\$6,832,128 + \$6,832,128 = \$13,664,256$.

⁴⁸ This calculation is $(\$6,907,383 + \$904,664) + (\$6,907,383 + \$440,748) = \$15,160,178$.

perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. The CAT is required under the CAT NMS Plan to capture and store Customer Identifying Information and Customer Account Information in a database separate from the transactional database and to create a CAT-Customer-ID for each Customer. As of May 31, 2024, the implementation of CAIS was completed.⁴⁹

During the CAT Fee 2024-1 Period, it is anticipated that FCAT will provide CAIS-related services. Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT for CAIS-related services provided by FCAT on a monthly basis. CAT LLC negotiated the fees for FCAT's CAIS-related services on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity. During the CAT Fee 2024-1 Period, it is anticipated that FCAT will continue to provide services relating to the ongoing operation, maintenance and support of CAIS.

CAT LLC estimates that the budget for CAIS operating fees during the CAT Fee 2024-1 Period will be approximately \$9,278,384.50. The budget for CAIS operating fees during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for CAIS operating fees for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of

⁴⁹ For a discussion of the implementation timeline for CAIS, *see* CAT Alert 2023-01.

the actual CAIS operating fees costs incurred in July 2024 (as CAT Fee 2024-1 Period began half way through July, on July 16, 2024).⁵⁰

CAT LLC calculated the budget for FCAT’s CAIS-related services for the CAT Fee 2024-1 Period based on the recurring monthly CAIS operating fees under the Plan Processor Agreement. This process for estimating the budget for the CAIS operating fees for the CAT Fee 2024-1 Period is the same process by which CAT LLC estimated the CAIS operating fees for the Original 2024 Budget. The Original 2024 Budget estimated a budget for CAIS operating fees of \$10,418,666 for the the [sic] first two quarters of 2024.⁵¹ The actual costs for CAIS operating fees for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$10,078,045.⁵² There is only an approximate 3% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted CAIS operating fees for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for CAIS operating fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the CAIS operating fees from the Original 2024 Budget. CAT LLC’s proposed annual budget for CAIS operating fees for 2024 had a small 2% percent decrease of \$491,821 from the Original 2024 Budget to the Updated 2024 Budget, from \$20,691,740 to \$20,199,919. Correspondingly, the proposed budget for CAIS operating fees for the third and fourth quarters

⁵⁰ This calculation is $(\$5,060,937 + \$5,060,937) - \$843,489.50 = \$9,278,384.50$.

⁵¹ This calculation is $\$5,282,128 + \$5,136,538 = \$10,418,666$.

⁵² This calculation is $\$5,017,108 + \$5,060,937 = \$10,078,045$.

of 2024 had a small 1% percentage decrease of \$151,202, from \$10,273,076 in the Original 2024 Budget⁵³ to \$10,121,874 in the Updated 2024 Budget.⁵⁴

(iv) Technology Costs – Change Request Fees

(a) Description of Change Request Fees

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the change request fees set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$162,500 in technology costs for change request fees for the CAT Fee 2024-1 Period. The technology costs related to change request fees include costs related to certain modifications, upgrades or other changes to the CAT.

Change requests are standard practice and necessary to reflect operational changes, including changes related to new market developments, such as new market participants. In general, if CAT LLC determines that a modification, upgrade or other changes to the functionality or service is necessary and appropriate, CAT LLC will submit a request for such a change to the Plan Processor. The Plan Processor will then respond to the request with a proposal for implementing the change, including the cost (if any) of such a change. CAT LLC then determines whether to approve the proposed change.

During the CAT Fee 2024-1 Period, it is anticipated that CAT LLC will engage FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The budget for change requests for the CAT Fee 2024-1 Period includes a placeholder of \$162,500 for potential change request fees that may be necessary in accordance with the Plan Processor

⁵³ This calculation is $\$5,136,538 + \$5,136,538 = \$10,273,076$.

⁵⁴ This calculation is $\$5,060,937 + \$5,060,937 = \$10,121,874$.

Agreement. The placeholder amount was determined based on prior experience with change requests related to the CAT.

CAT LLC estimates that the budget for change requests during the CAT Fee 2024-1 Period will be approximately \$162,500. The budget for change requests during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the change requests for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual change request costs incurred in July 2024 (as CAT Fee 2024-1 Period began half way through July, on July 16, 2024).⁵⁵

CAT LLC estimated the budget for the potential change requests for the CAT Fee 2024-1 Period based on, among other things, a review of past change requests and potential future change request needs, as well as discussions with FCAT. This process for estimating the budget for the change requests for the CAT Fee 2024-1 Period is the same process by which CAT LLC estimated the change requests cost for the Original 2024 Budget. The Original 2024 Budget estimated a change request budget of \$81,250 [*sic*] first two quarters of 2024.⁵⁶ The actual costs for change requests for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$0. Although the budget exceeded the actual costs of change requests during the first two quarters of 2024, CAT LLC believes that the process for estimating a placeholder amount for potential change requests is reasonable given the evolving technology needs of the CAT.

(b) Changes from Prior Fee Filing

⁵⁵ This calculation is $(\$0 + \$162,500) - \$0 = \$162,500$.

⁵⁶ This calculation is $\$0 + \$81,250 = \$81,250$.

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for change request fees from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the change request fees from the Original 2024 Budget. CAT LLC's proposed annual budget for change requests for 2024 decreased by \$81,250 from the Original 2024 Budget to the Updated 2024 Budget, from \$243,750 to \$162,500. CAT LLC has reduced the annual budget for a placeholder for change request fees for 2024 by one-third, as time has passed without additional change requests anticipated by this placeholder amount. Correspondingly, the proposed budget for change requests for the third and fourth quarters remained the same at \$162,500 for the Original 2024 Budget⁵⁷ and the Updated 2024 Budget.⁵⁸

(v) **Technology Costs – Capitalized Developed Technology Costs**

(a) *Description of Capitalized Developed Technology Costs*

Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the capitalized developed technology costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes \$4,101,990 in technology costs for capitalized developed technology costs for the CAT Fee 2024-1 Period. This category of costs includes the budget for capitalizable application development costs incurred in the development of the CAT. It is anticipated that such costs will include certain costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

⁵⁷ This calculation is $\$81,250 + \$81,250 = \$162,500$.

⁵⁸ This calculation is $\$0 + \$162,500 = \$162,500$.

CAT LLC estimates that the budget for capitalized developed technology costs during the CAT Fee 2024-1 Period will be approximately \$4,101,990. The budget for capitalized developed technology costs during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for capitalized developed technology costs for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual capitalized developed technology costs incurred in July 2024 (as CAT Fee 2024-1 Period began halfway through July, on July 16, 2024).⁵⁹

CAT LLC estimated the budget for capitalized developed technology costs for the CAT Fee 2024-1 Period based on an analysis of a variety of factors, including information related to potential technology costs and related contractual and Plan requirements, and discussions with FCAT regarding such potential technology costs. The Original 2024 Budget estimated a budget for capitalized developed technology costs of \$2,300,000 for the first two quarters of 2024.⁶⁰ The actual costs for capitalized developed technology costs for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$3,659,490.⁶¹ The increase was due to a software license fee for CAIS. Accordingly, CAT LLC believes that the process for estimating the budgeted capitalized developed technology costs for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for capitalized developed technology

⁵⁹ This calculation is $(\$3,810,990 + \$291,000) - \$0 = \$4,101,990$.

⁶⁰ This calculation is $\$2,300,000 + \$0 = \$2,300,000$.

⁶¹ This calculation is $\$2,300,000 + \$1,359,490 = \$3,659,490$.

costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in capitalized developed technology costs from the Original 2024 Budget. CAT LLC's proposed budget for capitalized developed technology costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for capitalized developed technology costs for 2024 increased by \$5,461,480 from the Original 2024 Budget of \$2,300,000 to the Updated 2024 Budget of \$7,761,480.⁶² Correspondingly, the budget for capitalized developed technology costs for the third and fourth quarters of 2024 increased from \$0⁶³ in the Original 2024 Budget to \$4,101,990 in the Updated 2024 Budget.⁶⁴ This increase in the capitalized developed technology costs budget in the Updated 2024 Budget over the Original 2024 Budget was the result of costs related to the software license fee for CAIS in accordance with the Plan Processor Agreement with FCAT, as well as costs related to a set of technology changes to be implemented by FCAT.

(vi) Legal Costs

(a) Description of Legal Costs

Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the legal costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes \$4,484,554.50 in legal costs for the CAT Fee 2024-1 Period. This category of costs represents budgeted costs for legal services for this period. CAT LLC anticipates that it will receive legal services from two law firms, Wilmer Cutler Pickering Hale

⁶² This calculation is $\$2,591,000 + \$5,170,480 = \$7,761,480$.

⁶³ This calculation is $\$0 + \$0 = \$0$.

⁶⁴ This calculation is $\$3,810,990 + \$291,000 = \$4,101,990$.

and Dorr LLP (“WilmerHale”) and Jenner & Block LLP (“Jenner”), during the CAT Fee 2024-1 Period.

Law Firm: WilmerHale. It is anticipated that legal costs during the CAT Fee 2024-1 Period will include costs related to the legal services performed by WilmerHale. CAT LLC anticipates that it will continue to employ WilmerHale during the CAT Fee 2024-1 Period based on, among other things, their expertise, long history with the project and recognition that the hourly fee rates for this law firm are anticipated to be in line with market rates for specialized legal expertise. WilmerHale’s billing rates are negotiated on an annual basis and are determined with reference to the rates charged by other leading law firms for similar work. The Participants assess WilmerHale’s performance and review prospective budgets and staffing plans submitted by WilmerHale on an annual basis. The legal fees will be paid by CAT LLC to WilmerHale.

During the CAT Fee 2024-1 Period, it is anticipated that WilmerHale will provide legal services related to the following:

- Assist with CAT fee filings and related funding issues;
- Draft exemptive requests from CAT NMS Plan requirements and/or proposed amendments to the CAT NMS Plan;
- Provide legal interpretations of CAT NMS Plan requirements;
- Provide legal support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team;
- Draft SRO rule filings related to the CAT Compliance Rule;
- Manage corporate governance matters, including supporting Operating Committee meetings and preparing resolutions and consents;
- Assist with communications with the industry, including CAT Alerts and presentations;
- Provide guidance regarding the confidentiality of CAT Data;

- Assist with cost management analyses and proposals;
- Assist with commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters;
- Provide support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues;
- Assist with CAT budget and FCAT costs;
- Assist other counsel for CAT on litigation-related matters; and
- Assist with legal responses related to third-party data requests.

CAT LLC estimated the budget for the legal costs for WilmerHale for the CAT Fee 2024-1

Period through an analysis of a variety of factors, including WilmerHale fee rates, historical legal fees, information related to pending legal issues and potential future legal issues, and discussions with WilmerHale.

Law Firm: Jenner. It is anticipated that legal costs during the CAT Fee 2024-1 Period will include costs related to the legal services performed by Jenner. CAT LLC anticipates that it will continue to employ Jenner during the CAT Fee 2024-1 Period based on among other things, their expertise, history with the project and recognition that their hourly fee rates are in line with market rates for specialized legal expertise. The legal fees will be paid by CAT LLC to Jenner.

During the CAT Fee 2024-1 Period, it is anticipated that Jenner will continue to provide legal assistance to CAT LLC regarding certain litigation matters, including: (1) CAT LLC's defense against a lawsuit filed in the Western District of Texas against Chair Gensler, the SEC and CAT LLC challenging the validity of the Rule 613 and the CAT and alleging various constitutional, statutory, and common law claims ("Texas Litigation");⁶⁵ (2) CAT LLC's

⁶⁵ *American Securities Ass'n v. Securities and Exchange Commission*, Case No. 23-13396 (11th Cir.).

intervention in a lawsuit in the Eleventh Circuit filed by various parties against the SEC challenging the SEC's approval of the CAT Funding Model;⁶⁶ and (3) a lawsuit in the Eleventh Circuit filed by Citadel Securities LLC seeking review of the SEC's May 20, 2024 order⁶⁷ granting the Participants temporary conditional exemptive relief related to the reporting of bids and/or offers made in response to a request for quote or other form of solicitation response provided in standard electronic format that is not immediately actionable.⁶⁸ Litigation involving CAT LLC is an expense of operating the CAT, and, therefore, is appropriately an obligation of both Participants and Industry Members under the CAT Funding Model.

CAT LLC estimated the budget for the legal costs for Jenner for the CAT Fee 2024-1 Period through an analysis of a variety of factors, including Jenner fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with Jenner.

Legal Cost Estimates. CAT LLC estimates that the budget for legal services during the CAT Fee 2024-1 Period will be approximately \$4,484,554.50. The budget for legal services during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the legal services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual legal costs incurred in July 2024 (as the CAT Fee 2024-1 Period began halfway through July, on July 16, 2024).⁶⁹

⁶⁶ *Davidson v. Gensler*, Case No. 6:24-cv-197 (W.D. Tex.).

⁶⁷ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 Fed. Reg. 45715 (May 23, 2024).

⁶⁸ *Citadel Securities LLC v. United States Securities and Exchange Commission*, Case No. 24-12300 (11th Cir.).

⁶⁹ This calculation is $(\$2,647,277 + \$2,342,562) - \$505,284.50 = \$4,484,554.50$.

CAT LLC estimated the budget for the legal services for the CAT Fee 2024-1 Period based on an analysis of a variety of factors, including law firm fee rates, historical legal fees, and information related to pending legal issues and potential future legal issues, and discussions with the law firms. This process for estimating the budget for the legal services for the CAT Fee 2024-1 Period is the same process by which CAT LLC estimated the legal cost for the Original 2024 Budget. The Original 2024 Budget estimated a budget for legal costs of \$2,440,000 for the first two quarters of 2024.⁷⁰ The actual costs for legal services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$3,156,762.⁷¹ Although there is an increase from the budgeted legal costs to the actual legal costs for the first two quarters of 2024, such increase was due to unanticipated issues that required additional legal efforts on behalf of CAT LLC that developed after the budget was created. Such additional costs including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. Accordingly, CAT LLC believes that the process for estimating the budgeted legal costs for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for legal costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the

⁷⁰ This calculation is $\$1,220,000 + \$1,220,000 = \$2,440,000$.

⁷¹ This calculation is $\$791,912 + \$2,364,850 = \$3,156,762$.

legal costs from the Original 2024 Budget. CAT LLC's proposed budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget. The annual budget for legal costs for 2024 increased from the Original 2024 Budget to the Updated 2024 Budget, from \$4,460,000 to \$8,146,599. Correspondingly, the proposed budget for legal costs for the third and fourth quarters increased from \$2,020,000⁷² in the Original 2024 Budget to \$4,989,837 in the Updated 2024 Budget.⁷³ This increase in the legal budget in the Updated 2024 Budget from the Original 2024 Budget was primarily due to unanticipated legal costs, including costs related to (1) the legal defense related to the Texas Litigation; and (2) additional regulatory and corporate legal issues, including (a) additional work for commercial contract-related matters, including change orders, Plan Processor Agreement items, and subcontract matters; (b) assistance regarding budget and FCAT costs; (c) assistance to other counsel for CAT on litigation-related matters; and (d) assistance related to CAT fee filings and CAT NMS Plan amendments. In addition, CAT LLC no longer anticipates incurring legal costs related to the law firms of Pillsbury Winthrop Shaw Pittman LLP and Covington & Burling LLP during the CAT Fee 2024-1 Period due to the conclusion of the relevant prior legal matters.

(vii) Consulting Costs

(a) Description of Consulting Costs

Section 11.3(a)(iii)(B)(B)(3) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the consulting costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$652,623 in consulting costs for the CAT Fee 2024-1 Period. The consulting costs represent the fees estimated to be paid to the consulting firm

⁷² This calculation is $\$1,047,500 + \$972,500 = \$2,020,000$.

⁷³ This calculation is $\$2,647,277 + \$2,342,560 = \$4,989,837$.

Deloitte & Touche LLP (“Deloitte”) as project manager during the CAT Fee 2024-1 Period.

These consulting costs include costs for advisory services related to the operation of the CAT, and meeting facilitation and communications coordination, vendor support and financial analyses.

It is anticipated that the costs for CAT during CAT Fee 2024-1 Period will include costs related to consulting services performed by Deloitte. CAT LLC anticipates that it will continue to employ Deloitte during the CAT Fee 2024-1 Period based on, among other things, their expertise, long history with the project, and the recognition that it is anticipated that the consulting fees will remain in line with market rates for this type of specialized consulting work. Deloitte’s fee rates are negotiated on an annual basis. CAT LLC assesses Deloitte’s performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. The consulting fees will be paid by CAT LLC to Deloitte.

It is anticipated that Deloitte will provide a variety of consulting services to the CAT during the CAT Fee 2024-1 Period, including the following:

- Implement program operations for the CAT project;
- Provide support to the Operating Committee, the Chair of the Operating Committee and the Leadership Team, including project management support, coordination and planning for meetings and communications, and interfacing with law firms and the SEC;
- Assist with cost and funding matters for the CAT, including assistance with loans and the CAT bank account for CAT funding;
- Provide support for updating the SEC on the progress of the development of the CAT; and
- Provide support for third party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

In addition, the consulting costs include the compensation for the Chair of the CAT Operating Committee.

CAT LLC estimates that the budget [*sic*] for consulting costs during the CAT Fee 2024-1 Period will be approximately \$652,623. The budget for consulting costs during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for consulting services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual consulting costs incurred in July 2024 (as the CAT Fee 2024-1 Period began [*sic*] halfway through July, on July 16, 2024).⁷⁴

CAT LLC estimates the budget for the consulting costs for Deloitte for the CAT Fee 2024-1 Period based on the current statement of work with Deloitte, which took into consideration past consulting costs, potential future consulting needs, the proposed rates and other contractual issues, as well as discussions with Deloitte. The Original 2024 Budget estimated a budget for consulting cost of \$800,000 for the first two quarters of 2024.⁷⁵ The actual costs for consulting services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$885,580.⁷⁶ There is only an approximate 10% difference between the estimate and actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted consulting costs for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for consulting costs from the prior

⁷⁴ This calculation is $(\$359,926 + \$354,495) - \$61,798 = \$652,623$.

⁷⁵ This calculation is $\$400,000 + \$400,000 = \$800,000$.

⁷⁶ This calculation is $\$264,101 + \$621,479 = \$885,580$.

CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the consulting costs from the Original 2024 Budget. CAT LLC’s proposed annual budget for consulting costs for 2024 has not changed from the Original 2024 Budget to the Updated 2024 Budget; it remains \$1,600,000. Correspondingly, the proposed budget for consulting costs for the third and fourth quarters of 2024 decreased by \$85,580 (which is approximately 11%), from \$800,000 in the Original 2024 Budget⁷⁷ to \$714,420 in the Updated 2024 Budget.⁷⁸

(viii) Insurance Costs

(a) Description of Insurance Costs

Section 11.3(a)(iii)(B)(B)(4) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the insurance costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$1,342,345 in insurance costs for the CAT Fee 2024-1 Period. The insurance costs represent the costs to be incurred for insurance for CAT during the CAT Fee 2024-1 Period.

It is anticipated that the insurance costs for CAT during the CAT Fee 2024-1 Period will include costs related to cyber security liability insurance, directors’ and officers’ liability insurance, and errors and omissions liability insurance brokered by USI Insurance Services LLC (“USI”). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. CAT LLC anticipates that it will continue to maintain this insurance during CAT Fee 2024-1 Period, and notes that the annual premiums for these policies were competitive for the coverage provided. CAT LLC estimated the budget for the insurance

⁷⁷ This calculation is $\$400,000 + \$400,000 = \$800,000$.

⁷⁸ This calculation is $\$359,925 + \$354,495 = \$714,420$.

costs for the CAT Fee 2024-1 Period based on the actual insurance quote from USI for 2024. The annual premiums would be paid by CAT LLC to USI.⁷⁹

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for insurance costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the insurance costs from the Original 2024 Budget. CAT LLC's proposed annual budget for insurance costs for 2024 decreased by \$525,680 from the Original 2024 Budget, from \$1,868,025 to \$1,342,345. For the Original 2024 Budget, CAT LLC estimated the budget for the insurance costs for the CAT Fee 2024-1 Period based on the 2023 insurance premiums plus a 15% year-over-year increase. However, the budgeted insurance costs as set forth in the Updated 2024 Budget were based on the actual insurance quote from USI for 2024.

(ix) Professional and Administration Costs

(a) Description of Professional and Administration Costs

Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the professional and administration costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$428,544.50 in professional and administration costs for the CAT Fee 2024-1 Period. In adopting the CAT NMS Plan, the Commission amended the Plan to add a requirement that CAT LLC's financial statements be prepared in compliance with GAAP, audited by an independent public accounting firm, and

⁷⁹ Note that CAT LLC generally pays its USI insurance premiums once per year, and such payment is scheduled to occur during the third quarter of 2024.

made publicly available.⁸⁰ The professional and administration costs would include costs related to accounting and accounting advisory services to support the operating and financial functions of CAT, financial statement audit services by an independent accounting firm, preparation of tax returns, and various cash management and treasury functions. The professional and administration costs represent the fees to be paid to Anchin Block & Anchin (“Anchin”) and Grant Thornton LLP (“Grant Thornton”) for financial services during CAT Fee 2024-1 Period.

Financial Advisory Firm: Anchin. It is anticipated that the professional and administration costs for the CAT Fee 2024-1 Period will include costs related to financial advisory services performed by Anchin. CAT LLC anticipates that it will continue to employ Anchin during CAT Fee 2024-1 Period based on, among other things, the firm’s relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. The fees for these services will be paid by CAT LLC to Anchin.

It is anticipated that Anchin will provide a variety of services to the CAT during the CAT Fee 2024-1 Period, including the following:

- Update and maintain internal controls;
- Provide cash management and treasury functions;
- Faciliate [sic] bill payments;
- Provide monthly bookkeeping;
- Review vendor invoices and documentation in support of cash disbursements;
- Provide accounting research and consultations on various accounting, financial reporting and tax matters;
- Address not-for-profit tax and accounting considerations;

⁸⁰ Section 9.2 of the CAT NMS Plan.

- Prepare tax returns;
- Address various accounting, financial reporting and operating inquiries from Participants;
- Develop and maintain annual operating and financial budgets, including budget to actual fluctuation analyses;
- Support compliance with the CAT NMS Plan;
- Work with and provide support to the Operating Committee and various CAT working groups;
- Prepare monthly, quarterly and annual financial statements;
- Support the annual financial statement audits by an independent auditor;
- Review historical costs from inception;
- Provide accounting and financial information in support of SEC filings; and
- Perform additional ad hoc accounting and financial advisory services, as requested by CAT LLC.

CAT LLC estimated the annual budget for the costs for Anchin based on historical costs adjusted for cost of living rate increases, and projected incremental advisory and support services. The budgeted costs for the CAT Fee 2024-1 Period are based on the estimated annual costs, minus actual costs through June and estimated costs for July.

Accounting Firm: Grant Thornton. It is anticipated that the professional and administration costs for the CAT Fee 2024-1 Period will include costs related to accounting services performed by Grant Thornton. CAT LLC anticipates that it will continue to employ Grant Thornton during CAT Fee 2024-1 Period based on, among other things, the firm's relevant expertise and fees, which are anticipated to remain in line with market rates for these financial advisory services. It is anticipated that Grant Thornton will continue to be engaged as an independent accounting firm to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. The fees for these services will be

paid by CAT LLC to Grant Thornton. CAT LLC estimated the budget for the accounting costs for Grant Thornton for the CAT Fee 2024-1 Period based on the anticipated hourly rates and the anticipated services plus an administrative fee.

Professional and Administration Cost Estimates. CAT LLC estimates that the budget for professional and administration services during the CAT Fee 2024-1 Period will be approximately \$428,544.50. The budget for professional and administration services during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the professional and administration services for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual professional and administration costs incurred in July 2024 (as CAT Fee 2024-1 Period began half way through July, on July 16, 2024).⁸¹

CAT LLC estimated the budget for the professional and administration costs for the CAT Fee 2024-1 Period based on a review of past professional and administration costs, potential future professional and administration needs, the proposed rates and other contractual issues, as well as discussions with Anchin and Grant Thornton. This process for estimating the budget for the professional and administration costs for the CAT Fee 2024-1 Period is the same process by which CAT LLC estimated the professional and administration costs for the Original 2024 Budget. The Original 2024 Budget estimated a budget for professional and administration costs of \$395,930 for the first two quarters of 2024.⁸² The actual costs for professional and administration services for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$372,977.⁸³ There is only an approximate 6% difference between the estimate and

⁸¹ This calculation is $(\$157,269 + \$293,682) - \$22,406.50 = \$428,544.50$.

⁸² This calculation is $\$213,600 + \$182,330 = \$395,930$.

⁸³ This calculation is $\$110,542 + \$262,435 = \$372,977$.

actuals. Accordingly, CAT LLC believes that the process for estimating the budgeted professional and administration costs for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for professional and administration costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the professional and administration costs from the Original 2024 Budget. CAT LLC's proposed annual budget for professional and administration costs for 2024 had a very minor increase of \$2,666 from the Original 2024 Budget, from \$821,264 to \$823,930. CAT LLC's proposed annual budget for professional and administration costs for 2024 has not changed in a material way for Anchin and Grant Thornton costs. Correspondingly, the proposed budget for professional and administration costs for the third and fourth quarters of 2024 increased by \$25,617 (which is approximately 6%), from \$425,334 in the Original 2024 Budget⁸⁴ to \$450,951 in the Updated 2024 Budget.⁸⁵

(x) Public Relations Costs

(a) Description [sic] of Public Relations Costs

Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the public relations costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that included \$43,225 in public relations costs for the CAT Fee 2024-1 Period. The public relations costs represent the fees paid to a public relations firm for professional communications services to CAT, including media relations consulting,

⁸⁴ This calculation is $\$150,000 + \$275,334 = \$425,334$.

⁸⁵ This calculation is $\$157,269 + \$293,682 = \$450,951$.

strategy and execution. By engaging a public relations firm, CAT LLC will be better positioned to understand and address CAT matters to the benefit of all market participants.

It is anticipated that the public relations costs for the CAT Fee 2024-1 Period will include costs related to the public relations services performed by RF|Binder Partners Inc. (“RF|Binder”). CAT LLC anticipates that it will continue to employ RF|Binder during the CAT Fee 2024-1 Period based on, among other things, the firm’s relevant expertise, history with the project, and fees, which are anticipated to remain in line with market rates for these public relations services. It is anticipated that, during the CAT Fee 2024-1 Period, RF|Binder will provide services related to communications with the public regarding the CAT, including monitoring developments related to the CAT (*e.g.*, congressional efforts, public comments and reaction to proposals, press coverage of the CAT), reporting such developments to CAT LLC, and drafting and disseminating communications to the public regarding such developments as well as reporting on developments related to the CAT (*e.g.*, amendments to the CAT NMS Plan). Public relations services are important for various reasons, including monitoring comments made by market participants about the CAT and understanding issues related to the CAT discussed on the public record.

CAT LLC estimates that the budget for public relations services during the CAT Fee 2024-1 Period will be approximately \$43,225. The budget for public relations services during the CAT Fee 2024-1 Period is calculated based on the Updated 2024 Budget. Specifically, this estimate was calculated by adding the budgeted amounts for the public relations for the third and fourth quarter of 2024 as set forth in the Updated 2024 Budget and subtracting one half of the actual public relations costs incurred in July 2024 (as CAT Fee 2024-1 Period began half way

through July, on July 16, 2024).⁸⁶ The fees for these services will be paid by CAT LLC to RF|Binder.

CAT LLC estimated the budget for the public relations costs for the CAT Fee 2024-1 Period based on a review of past public relations costs, potential future public relations needs, the proposed rates and other contractual issues, as well as discussions with RF|Binder. CAT LLC also recognized that public relations costs are generally consistent throughout the year. This process for estimating the budget for the public relations costs for the CAT Fee 2024-1 Period is the same process by which CAT LLC estimated the public relations costs for the Original 2024 Budget. The actual costs for public relations for the first two quarters of 2024, which are set forth in the Updated 2024 Budget, were \$46,200.⁸⁷ They are the same. Accordingly, CAT LLC believes that the process for estimating the budgeted public relations costs for the CAT Fee 2024-1 Period is reasonable.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for public relations costs from the prior CAT Fee filing. As this is the first Prospective CAT Fee Filing, this filing describes the changes in the public relations costs from the Original 2024 Budget. CAT LLC's proposed annual budget for public relations costs for 2024 had a very minor increase of \$875 from the Original 2024 Budget to the Updated 2024 Budget, from \$92,400 to \$93,275. Correspondingly, the proposed budget for public relations costs for the third and fourth quarters of 2024 increased

⁸⁶ This calculation is $(\$23,450 + \$23,625) - \$3,850 = \$43,225$.

⁸⁷ This calculation is $\$23,100 + \$23,100 = \$46,200$.

by \$875, from \$46,200 in the Original 2024 Budget⁸⁸ to \$47,075 in the Updated 2024 Budget.⁸⁹
The minor change was made to reflect updated contractual terms.

(xi) Reserve

(a) Description of Reserve

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to provide a brief description of the reserve costs set forth in the budget. The Operating Committee approved an operating budget for the CAT pursuant to Section 11.1(a) of the CAT NMS Plan that includes \$27,695,385 for a reserve for the CAT Fee 2024-1 Period. Section 11.1(a)(i) of the CAT NMS Plan states that the budget shall include a reserve. Section 11.1(a)(ii) of the CAT NMS Plan further describes the reserve as follows:

For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

In light of the fact that CAT LLC currently does not maintain any reserve, CAT LLC determined to include a reserve in the amount of 25% of Budgeted CAT Costs 2024-1 other than the reserve. Accordingly, the reserve for the CAT Fee 2024-1 Period was calculated by multiplying the Budgeted CAT Costs 2024-1 other than the reserve amount, which is \$110,781,540, by 25%.

(b) Changes from Prior Fee Filing

Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan requires the fee filing for a Prospective CAT Fee to describe the reason for changes in the line item for a reserve from the prior CAT Fee

⁸⁸ This calculation is $\$23,100 + \$23,100 = \$46,200$.

⁸⁹ This calculation is $\$23,450 + \$23,625 = \$47,075$.

filing. Prior to July 16, 2024, all CAT costs were paid by the Participants via notes.

Accordingly, to date, CAT LLC has not maintained any reserve. With the commencement of CAT Fees, CAT LLC proposes to include costs for a reserve of \$27,695,385 in Budgeted CAT Costs 2024-1.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Fee Rate 2024-1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the CAT Fee 2024-1 Period. Under the CAT NMS Plan, the Operating Committee is required to “reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.”⁹⁰ The Operating Committee is required to base its projection on the prior twelve months, but it may use its discretion to analyze the likely volume for the upcoming year. Such discretion would allow the Operating Committee to use its judgment when estimating projected total executed equivalent share volume if the volume over the prior twelve months was unusual or otherwise unfit to serve as the basis of a future volume estimate.⁹¹

The total executed equivalent share volume of transactions in Eligible Securities for the 12-month period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. The Operating Committee has determined to calculate the projected total executed equivalent share volume for a four-month recovery period for CAT Fee 2024-1 by multiplying by 4/12ths the executed equivalent share volume for the prior 12 months. The

⁹⁰ Section 11.3(a)(i)(D) of the CAT NMS Plan.

⁹¹ CAT Funding Model Approval Order at 62651.

Operating Committee determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395, the executed equivalent share volume for 2022 was 4,039,821,841,560.31, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6. Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024-1 is projected to be 1,326,917,946,968.403 executed equivalent shares.⁹²

The projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024-1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a CAT Fee.⁹³

(E) Fee Rate 2024-1

Fee Rate 2024-1 would be calculated by dividing Budgeted CAT Costs 2024-1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the four-month recovery period for CAT Fee 2024-1, as described in detail above.⁹⁴ Specifically, Fee Rate 2024-1 would be calculated by dividing \$138,476,925 by 1,326,917,946,968.403 executed equivalent shares. As a result, Fee Rate 2024-1 would be \$0.0001043598251997246 per executed equivalent share. Fee Rate 2024-1 is provided in this

⁹² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by 4/12ths.

⁹³ Section 11.3(a)(iii)(B) of the CAT NMS Plan.

⁹⁴ In approving the CAT Funding Model, the Commission stated that “[t]he manner in which the Fee Rate for Prospective CAT Costs will be calculated (*i.e.*, by dividing the CAT costs reasonably budgeted for the upcoming year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year) is reasonable.” CAT Funding Model Approval Order at 62651.

filing in accordance with the requirement in the CAT NMS Plan to provide the Fee Rate in a fee filing for a CAT Fee.⁹⁵

(3) Monthly Fees

CEBBs and CEBSs would be required to pay fees for CAT Fee 2024-1 on a monthly basis for four months, from November 2024 until February 2025.⁹⁶ A CEBB's or CEBS's fee for each month would be calculated based on the transactions in Eligible Securities executed by the CEBB or CEBS from the prior month.⁹⁷ Proposed paragraph (a)(3)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice for CAT Fee 2024-1 in October 2024, and would receive an invoice for CAT Fee 2024-1 each month thereafter until January 2025. Proposed paragraph (a)(3)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024-1 on a monthly basis." In addition, paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(4) Consolidated Audit Trail Funding Fees

To implement CAT Fee 2024-1, the Exchange proposes to add a new paragraph to "Consolidated Audit Trail Funding Fees" section of the Exchange's fee schedule, to include the proposed paragraphs described below.

(A) Fee Schedule for CAT Fee 2024-1

The CAT NMS Plan states that:

Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities ("CAT Executing Broker for the Buyer" or "CEBB") and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities ("CAT Executing Broker for the Seller"

⁹⁵ Section 11.3(a)(iii)(B) of the CAT NMS Plan.

⁹⁶ See Section 11.3(a)(iii)(A) of the CAT NMS Plan.

⁹⁷ See proposed paragraph (a)(3)(B) of the fee schedule.

or “CEBS”) will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB’s CAT Fee or CEBS’s CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.⁹⁸

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(3) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(3) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for CAT Fee 2024-1 in October 2024, which shall set forth the CAT Fee 2024-1 fees calculated based on transactions in September 2024, and shall receive an invoice for CAT Fee 2024-1 for each month thereafter until January 2025.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024-1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000035 per executed equivalent share.

(C) Notwithstanding the last invoice date of January 2025 for CAT Fee-2024-1 in paragraph 3(A), CAT Fee 2024-1 shall continue in effect after January 2025, with each CAT Executing Broker receiving an invoice for CAT Fee 2024-1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2024-1 will no longer be in effect.

(D) Each CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024-1 in accordance with paragraph (b).

As noted in the Plan amendment for the CAT Funding Model, “[a]s a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.”⁹⁹ Accordingly, proposed paragraph (a)(3)(B) of the fee schedule would set forth a

⁹⁸ Section 11.3(a)(iii)(A) of the CAT NMS Plan.

⁹⁹ CAT Funding Model Approval Order at 62658, n.658.

fee rate of \$0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024-1 of \$0.0001043598251997246 by one-third, and rounding the result to six decimal places.¹⁰⁰ The Operating Committee determined to use six decimal places to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

The proposed language in paragraph (a)(3)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2024-1. Specifically, CAT Executing Brokers would receive their first monthly invoice for CAT Fee 2024-1 in October 2024 and the fees set forth in that invoice would be calculated based on transactions executed in September 2024. The payment for the first invoice would be required within 30 days after the receipt of the first invoice (unless a longer period is indicated), as described in paragraph (b)(2) of the fee schedule.

Proposed paragraph (a)(3)(A) of the fee schedule also would describe the monthly cadence of the invoices for CAT Fee 2024-1. Specifically, after the first invoices are provided to CAT Executing Brokers in October 2024, invoices will be sent to CAT Executing Brokers each month thereafter until January 2025.

Proposed paragraph (a)(3)(B) of the fee schedule would describe the invoices for CAT Fee 2024-1. Proposed paragraph (a)(3)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for CAT Fee 2024-1 on a monthly basis.” Proposed paragraph (a)(3)(B) of the fee schedule also would describe the fees to be set forth in the invoices for CAT Fee 2024-1. Specifically, it would state that “[e]ach

¹⁰⁰ Dividing \$0.0001043598251997246 by three equals \$ \$0.00003478660839990821. Rounding \$0.00003478660839990821 to six decimal places equals \$0.000035.

month, such invoices shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer ('CEBB') and/or the CAT Executing Broker for the Seller ('CEBS') (as applicable) from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000035 per executed equivalent share."

Since CAT Fee 2024-1 is a monthly fee based on actual transaction volume from the prior month, CAT Fee 2024-1 may collect more or less than two-thirds of Budgeted CAT Costs 2024-1. To the extent that CAT Fee 2024-1 collects more than two-thirds of Budgeted CAT Costs 2024-1, any excess money collected will be used to offset future fees and/or to fund the reserve for the CAT. To the extent that CAT Fee 2024-1 collects less than two-thirds of Budgeted CAT Costs 2024-1, the budget for the CAT in the ensuing months will reflect such shortfall.

Furthermore, proposed paragraph (a)(3)(C) of the fee schedule would describe how long CAT Fee 2024-1 would remain in effect. It would state that "[n]otwithstanding the last invoice date of January 2025 for CAT Fee 2024-1 in paragraph 3(A), CAT Fee 2024-1 shall continue in effect after January 2025, with each CAT Executing Broker receiving an invoice for CAT Fee 2024-1 each month, until a new subsequent CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act. Consolidated Audit Trail, LLC will provide notice when CAT Fee 2024-1 will no longer be in effect."

Finally, proposed paragraph (a)(3)(D) of the fee schedule would set forth the requirement for the CAT Executing Brokers to pay the invoices for CAT Fee 2024-1. It would state that "[e]ach

CAT Executing Broker shall be required to pay each invoice for CAT Fee 2024-1 in accordance with paragraph (b).”

(B) Manner of Payment

The Exchange proposes to add paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule to describe the manner of payment of Industry Member CAT fees. The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.¹⁰¹ The Plan Processor has established a billing system for CAT fees.¹⁰² Therefore, the Exchange proposes to require CAT Executing Brokers to pay CAT Fee 2024-1 in accordance with such system. Accordingly, proposed paragraph (b)(1) would state that “[e]ach CAT Executing Broker shall pay its CAT fees as required pursuant to paragraph (a) each month to the Consolidated Audit Trail, LLC in the manner prescribed by the Consolidated Audit Trail, LLC.”

(C) Failure to Pay CAT Fees

The CAT NMS Plan further states that:

Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.¹⁰³

¹⁰¹ Section 11.4 of the CAT NMS Plan.

¹⁰² The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs related to the billing of CAT fees, the Industry Member CAT Reporter Portal User Guide, the FCAT Industry Member Onboarding Guide, the FCAT Connectivity Supplement for Industry Members and the CAT Billing Webinars (dated Sept. 28, 2023 and Nov. 7, 2023), each available on the CAT website.

¹⁰³ Section 11.4 of the CAT NMS Plan.

Accordingly, the Exchange proposes to add this requirement to the Exchange's fee schedule.

Proposed paragraph (b)(2) of the fee schedule would state:

Each CAT Executing Broker shall pay the CAT fees required pursuant to paragraph (a) within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If a CAT Executing Broker fails to pay any such CAT fee when due, such CAT Executing Broker shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of (i) the Prime Rate plus 300 basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to CAT Fee 2024-1.

(5) CAT Fee Details

The CAT NMS Plan states that:

Details regarding the calculation of a Participant or CAT Executing Broker's CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.¹⁰⁴

Such information would provide CEBBs and CEBSs with the ability to understand the details regarding the calculation of their CAT Fee.¹⁰⁵ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their CAT Fees on their monthly invoice for the CAT Fees.

In addition, CAT LLC will make certain aggregate statistics regarding CAT Fees publicly available. Specifically, the CAT NMS Plan states that, "[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and

¹⁰⁴ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

¹⁰⁵ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, providing CAT Execut[ing] Brokers information regarding the calculation of their CAT Fees will aid in transparency and permit CAT Execut[ing] Brokers to confirm the accuracy of their invoices for CAT Fees." CAT Funding Model Approval Order at 62667.

corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.”¹⁰⁶ Such aggregate statistics will be available on the CAT website.

Furthermore, CAT LLC will make publicly available on the CAT website the total amount invoiced each month that CAT Fee 2024-1 is in effect as well as the total amount invoiced for CAT Fee 2024-1 for all months since its commencement. CAT LLC also will make publicly available on the CAT website the total costs to be collected from Industry Members for CAT Fee 2024-1.

(6) Financial Accountability Milestones

The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.”¹⁰⁷ The substantive requirements of the Financial Accountability Milestones related to Period 4 have been satisfied, as the CAT has completed the requirements for the “Full Implementation of CAT NMS Plan Requirements.” Section 1.1 of the CAT NMS Plan defines “Full Implementation of CAT NMS Plan Requirements” as:

the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer

¹⁰⁶ Section 11.3(a)(iv)(B) of the CAT NMS Plan. In approving the CAT Funding Model, the Commission stated that “[t]he publication of the aggregate executed equivalent share volume and aggregate fee is appropriate because it would allow Participants and CAT Executing Brokers a high-level validation of executed volume and fees.” CAT Funding Model Approval Order at 62667.

¹⁰⁷ Section 11.3(a)(iii)(C) of the CAT NMS Plan.

Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).

Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants' Quarterly Progress Reports. As indicated by the Participants' Quarterly Progress Report for the second and third quarter of 2024,¹⁰⁸ Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.

(A) Transaction Reporting and Regulatory Access

The CAT system functionality required by Rule 613 and the CAT NMS Plan related to order and transaction data has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to order and transaction data occurred over four phases: Phases 2a, 2b, 2c and 2d.¹⁰⁹ As described in the Quarterly Progress Reports and summarized below, each of these phases has been fully implemented.¹¹⁰

(i) Phase 2a

The Quarterly Progress Reports state that "Phase 2a was fully implemented as of October 26, 2020."¹¹¹ The Phase 2a Industry Member Data is described in detail in the SEC's Phased Reporting Exemptive Relief Order, and includes the following data related to Eligible Securities that are equities:

¹⁰⁸ Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

¹⁰⁹ The SEC granted exemptive relief from certain provisions of the CAT NMS Plan to allow for the phased implementation of Industry Member reporting via five phases addressing the reporting requirements for Phase 2a Industry Member Data, Phase 2b Industry Member Data, Phase 2c Industry Member Data, Phase 2d Industry Member Data and Phase 2e Industry Member Data. Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order").

¹¹⁰ See, e.g., Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

¹¹¹ See, e.g., Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

- All events and scenarios covered by OATS, which includes information related to the receipt or origination of orders, order transmittal, and order modifications, cancellations and executions;
- Reportable Events for: (1) proprietary orders, including market maker orders, for Eligible Securities that are equities; (2) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) sent to a national securities exchange or FINRA’s Alternative Display Facility (“ADF”); (3) electronic quotes in unlisted Eligible Securities (*i.e.*, OTC Equity Securities) received by an Industry Member operating an interdealer quotation system (“IDQS”); and (4) electronic quotes in unlisted Eligible Securities sent to an IDQS or other quotation system not operated by a Participant or Industry Member;
- Firm Designated IDs (“FDIDs”), which Industry Members must report to the CAT as required by Sections 6.3(d)(i)(A) and 6.4(d)(ii)(C) of the CAT NMS Plan;
- Industry Members would be required to report all street side representative orders, including both agency and proprietary orders and mark such orders as representative orders, except in certain limited exceptions as described in the Industry Member Technical Specifications;
- The link between the street side representative order and the order being represented when: (1) the representative order was originated specifically to represent a single order received either from a customer or another broker-dealer; and (2) there is (a) an existing direct electronic link in the Industry Member’s system between the order being represented and the representative order and (b) any resulting executions are immediately and automatically applied to the represented order in the Industry Member’s system;
- Manual and Electronic Capture Time for Manual Order Events;
- Special handling instructions for the original receipt or origination of an order during Phase 2a; and
- When routing an order, whether the order was routed as an intermarket sweep order (“ISO”).

In Phase 2a, Industry Members were not required to report modifications of a previously routed order in certain limited instances, nor were they required to report a cancellation of an order received from a Customer after the order has been executed.¹¹²

(ii) Phase 2b

¹¹² Phased Reporting Exemptive Relief Order at 23076-78.

The Quarterly Progress Reports state that “Phase 2b was fully implemented as of January 4, 2021.”¹¹³ The Phase 2b Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order, and includes the Industry Member Data related to Eligible Securities that are options and related to simple electronic option orders, excluding electronic paired option orders. A simple electronic option order is an order to buy or sell a single option that is not related to or dependent on any other transaction for pricing and timing of execution that is either received or routed electronically by an Industry Member. Electronic receipt of an order is defined as the initial receipt of an order by an Industry Member in electronic form in standard format directly into an order handling or execution system. Electronic routing of an order is the routing of an order via electronic medium in standard format from one Industry Member’s order handling or execution system to an exchange or another Industry Member. An electronic paired option order is an electronic option order that contains both the buy and sell side that is routed to another Industry Member or exchange for crossing and/or price improvement as a single transaction on an exchange. Responses to auctions of simple orders and paired simple orders would be reportable in Phase 2b. Furthermore, combined orders in options would be treated in Phase 2b in the same way as equity representative orders are treated in Phase 2a. A combined order would mean, as permitted by SRO rules, a single, simple order in Listed Options created by combining individual, simple orders in Listed Options from a customer with the same exchange origin code before routing to an exchange. During Phase 2b, the single combined order sent to an exchange must be reported and marked as a combined order, but the linkage to the underlying orders is not required to be reported until Phase 2d.¹¹⁴

(iii) Phase 2c

¹¹³ See, e.g., Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

¹¹⁴ Phased Reporting Exemptive Relief Order at 23078.

The Quarterly Progress Reports state that “Phase 2c was implemented as of April 26, 2021.”¹¹⁵ The Phase 2c Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. That Order states that “Phase 2c Industry Member Data” is Industry Member Data related to Eligible Securities that are equities other than Phase 2a Industry Member Data, Phase 2d Industry Member Data, or Phase 2e Industry Member Data. Specifically, the Phase 2c Industry Member Data includes Industry Member Data that is related to Eligible Securities that are equities and that is related to: (1) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (2) quotes in unlisted Eligible Securities sent to an IDQS operated by a CAT Reporter (reportable by the Industry Member sending the quotes) (except for quotes reportable in Phase 2d, as discussed below); (3) electronic quotes in listed equity Eligible Securities (*i.e.*, NMS stocks) that are not sent to a national securities exchange or FINRA’s Alternative Display Facility; (4) reporting changes to client instructions regarding modifications to algorithms; (5) marking as a representative order any order originated to work a customer order in price guarantee scenarios, such as a guaranteed VWAP; (6) flagging rejected external routes to indicate a route was not accepted by the receiving destination; (7) linkage of duplicate electronic messages related to a Manual Order Event between the electronic event and the original manual route; (8) special handling instructions on order route reports (other than the ISO, which is required to be reported in Phase 2a); (9) quote identifier on trade events; (10) reporting of LTIDs (if applicable) for accounts with Reportable Events that are reportable to CAT as of and including Phase 2c; (11) reporting of date account opened or Account Effective Date (as applicable) for accounts and reporting of a flag indicating the Firm Designated ID type as

¹¹⁵ See, *e.g.*, Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

account or relationship; (12) order effective time for orders that are received by an Industry Member and do not become effective until a later time; (13) the modification or cancellation of an internal route of an order; and (14) linkages to the customer order(s) being represented for representative order scenarios, including agency average price trades, net trades, aggregated orders, and disconnected Order Management System (“OMS”) – Execution Management System (“EMS”) scenarios, as required in the Industry Member Technical Specifications.¹¹⁶

Phase 2c Industry Member Data also includes electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are equities and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: (1) an equity bid or offer is displayed publicly or has been communicated (a) for listed securities to the ADF operated by FINRA; or (b) for unlisted equity securities to an “interdealer quotation system,” as defined in FINRA Rule 6420(c); or (2) an equity bid or offer which is accessible electronically by customers or other market participants and is immediately actionable for execution or routing; *i.e.*, no further manual or electronic action is required by the responder providing the quote in order to execute or cause a trade to be executed). With respect to OTC Equity Securities, OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter (other than such an IDQS that does not match and execute orders) are reportable by the Industry Member sending them in Phase 2c. Accordingly, any response to a request for quote or other form of solicitation response provided in a standard electronic format (*e.g.*, FIX) that meets this quote definition (*i.e.*, an equity bid or offer which is accessible

¹¹⁶ Phase Reporting Exemptive Relief Order at 23078-79.

electronically by customers or other market participants and is immediately actionable for execution or routing) would be reportable in Phase 2c.¹¹⁷

(iv) Phase 2d

The Quarterly Progress Reports state that “Phase 2d was fully implemented as of December 13, 2021.”¹¹⁸ The Phase 2d Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2d Industry Member Data” is Industry Member Data that is related to Eligible Securities that are options other than Phase 2b Industry Member Data, Industry Member Data that is related to Eligible Securities that are equities other than Phase 2a Industry Member Data or Phase 2c Industry Member Data, and Industry Member Data other than Phase 2e Industry Member Data. Phase 2d Industry Member Data includes with respect to the Eligible Securities that are options: (1) simple manual orders; (2) electronic and manual paired orders; (3) all complex orders with linkages to all CAT-reportable legs; (4) LTIDs (if applicable) for accounts with Reportable Events for Phase 2d; (5) date account opened or Account Effective Date (as applicable) for accounts with an LTID and flag indicating the Firm Designated ID type as account or relationship for such accounts; (6) Allocation Reports as required to be recorded and reported to the Central Repository pursuant to Section 6.4(d)(ii)(A)(1) of the CAT NMS Plan; (7) the modification or cancellation of an internal route of an order; and (8) linkage between a combined order and the original customer orders. Phase 2d Industry Member Data also would include electronic quotes that are provided by or received in a CAT Reporter’s order/quote handling or execution systems in Eligible Securities that are options and are provided by an Industry Member to other market participants off a national securities exchange under the following conditions: a listed option bid or offer which is

¹¹⁷ *Id.* at 23079.

¹¹⁸ *See, e.g.*, Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

accessible electronically by customers or other market participants and is immediately actionable (*i.e.*, no further action is required by the responder providing the quote in order to execute or cause a trade to be executed). Accordingly, any response to a request for quote or other form of solicitation response provided in standard electronic format (*e.g.*, FIX) that meets this definition is reportable in Phase 2d for options.¹¹⁹

Phase 2d Industry Member Data also includes with respect to Eligible Securities that are options or equities (1) receipt time of cancellation and modification instructions through Order Cancel Request and Order Modification Request events; (2) modifications of previously routed orders in certain instances; and (3) OTC Equity Securities quotes sent by an Industry Member to an IDQS operated by an Industry Member CAT Reporter that does not match and execute orders. In addition, subject to any exemptive or other relief, Phase 2d Industry Member Data includes verbal or manual quotes on an exchange floor or in the over-the-counter market, where verbal quotes and manual quotes are defined as bids or offers in Eligible Securities provided verbally or that are provided or received other than via a CAT Reporter's order handling and execution system (*e.g.*, quotations provided via email or instant messaging).¹²⁰

(v) Regulatory Access to Order and Transaction Data

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2a, 2b, 2c and 2d data and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report. As CAT LLC reported on its Quarterly Progress

¹¹⁹ Phase Reporting Exemptive Relief Order at 23079.

¹²⁰ *Id.* at 23079-80.

Reports, the query tool functionality incorporating the data from Phases 2a, 2b, 2c and 2d was available to the Participants and to the Commission as of December 31, 2021.¹²¹

(B) CAIS Reporting and Regulatory Access

The CAT System functionality required by Rule 613 and the CAT NMS Plan related to Customer information has been developed, successfully tested, and fully implemented, including the requirements related to regulatory access. The implementation of CAT requirements related to Customer information occurred during Phase 2e. As described in the Quarterly Progress Reports and summarized below, Phase 2e has been fully implemented as of May 31, 2024.¹²² Furthermore, because a month of customer and account information data is necessary to create report cards with regard to such data, the publication of monthly report cards with respect to customer and account information commenced on July 15, 2024.¹²³ Accordingly, the Financial Accountability Milestone related to Period 4 was completed on July 15, 2024.

(i) Phase 2e

The Q2 & Q3 2024 Quarterly Progress Report indicates that Phase 2e was fully implemented as of May 31, 2024.¹²⁴ Phase 2e Industry Member Data is described in detail in the SEC’s Phased Reporting Exemptive Relief Order. “Phase 2e Industry Member Data” includes “Customer Account Information and Customer Identifying Information, other than LTIDs, date account opened/Account Effective Date and Firm Designated ID type flag previously reported to the CAT.”¹²⁵ LTIDs and Account Effective Date are both provided in Phases 2c and 2d in

¹²¹ See, e.g., Q1 2024 Quarterly Progress Report (Apr. 30, 2024).

¹²² *Id.*

¹²³ Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

¹²⁴ *Id.*

¹²⁵ Phase Reporting Exemptive Relief Order at 23080.

certain circumstances, as discussed above. Section 1.1 of the CAT NMS Plan defines the term “Customer Account Information” to

include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable); except, however, that (a) in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will (i) provide the Account Effective Date in lieu of the “date account opened”; (ii) provide the relationship identifier in lieu of the “account number”; and (iii) identify the “account type” as a “relationship”; (b) in those circumstances in which the relevant account was established prior to the implementation date of the CAT NMS Plan applicable to the relevant CAT Reporter (as set forth in Rule 613(a)(3)(v) and (vi)), and no “date account opened” is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances: (i) where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system; (ii) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system; (iii) where there are multiple dates associated with an account in an Industry Member’s system, and the parameters of each date are determined by the individual Industry Member; and (iv) where the relevant account is an Industry Member proprietary account.

The term “Customer Identifying Information” is defined in Section 1.1 of the CAT NMS Plan to mean

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: name, address, Employer Identification Number (“EIN”)/Legal Entity Identifier (“LEI”) or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer’s LEI in addition to other information of sufficient detail to identify a Customer.

(ii) Regulatory Access to Customer Information

The Financial Accountability Milestone related to Period 4 requires that CAT provide functionality that permits the Participants and the Commission to access Phase 2e Industry

Member Data (in addition to the Phase 2a, 2b, 2c and 2d Industry Member Data, as discussed above). As CAT LLC reported on its Q2 & Q3 Quarterly Progress Report, regulators had efficient access to Phase 2e Industry Member Data via the query tool functionality required under the CAT NMS Plan by July 15, 2024.¹²⁶

(C) Error Rate

The Financial Accountability Milestones related to Period 4 require the implementation of the CAT System “at the initial Error Rates specified by Section 6.5(d)(i) or less.” The average overall error rate as of July 15, 2024, was less than 5%, which is the initial Error Rate specified by Section 6.5(d)(i) of the CAT NMS Plan. The average overall error rate was calculated by dividing the compliance errors by processed records.

(7) Participant Invoices

While CAT Fees charged to Industry Members become effective in accordance with the requirements of Section 19(b) of the Exchange Act,¹²⁷ CAT fees charged to Participants are implemented via an approval of the CAT fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan.¹²⁸ On July 31, 2024, the Operating Committee approved the Participant fee related to CAT Fee 2024-1. Specifically, pursuant to the requirements of CAT NMS Plan,¹²⁹ each Participant would be required to pay a CAT fee calculated using the fee rate of \$0.000035, which is the same fee rate that applies to CEBBs and CEBSs. Like CEBBs and CEBSs, each Participant would be required to pay such CAT fees on a monthly basis for four months, from November 2024 until February 2025, and each Participant’s fee for each month would be calculated based on the transactions in Eligible Securities executed

¹²⁶ Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

¹²⁷ Section 11.3(a)(i)(A)(I) of the CAT NMS Plan.

¹²⁸ CAT Funding Model Approval Order at 62659.

¹²⁹ See Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan.

on the applicable exchange (for the Participant exchanges) or otherwise than on the exchange (for FINRA) in the prior month. Accordingly, each Participant will receive its first invoice in October 2024, and would receive an invoice each month thereafter until January 2025. Like with the CAT Fee 2024-1 applicable to CEBBs and CEBSs as described in proposed paragraph (a)(3)(C) of the fee schedule, notwithstanding the last invoice date of January 2025, Participants will continue to receive invoices for this fee each month until a new subsequent CAT Fee is in effect with regard to Industry Members. Furthermore, Section 11.4 of the CAT NMS Plan states that each Participant is required to pay such invoices as required by Section 3.7(b) of the CAT NMS Plan. Section 3.7(b) states, in part, that

[e]ach Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the “Payment Date”). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act. The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act¹³⁰, which requires, among other things, that the Exchange’s rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers. The Exchange also believes that the proposed rule change is consistent with the provisions of Section

¹³⁰ 15 U.S.C. 78f(b)(6).

6(b)(4) of the Act,¹³¹ because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(8) of the Act¹³², which requires that the Exchange’s rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. These provisions also require that the Exchange be “so organized and [have] the capacity to be able to carry out the purposes” of the Act and “to comply, and . . . to enforce compliance by its members and persons associated with its members,” with the provisions of the Exchange Act.¹³³ Accordingly, a reasonable reading of the Act indicates that it intended that regulatory funding be sufficient to permit an exchange to fulfill its statutory responsibility under the Act, and contemplated that such funding would be achieved through equitable assessments on the members, issuers, and other users of an exchange’s facilities.

The Exchange believes that this proposal is consistent with the Act because it implements provisions of the Plan and is designed to assist the Exchange in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”¹³⁴ To the extent that this proposal implements the Plan and applies specific requirements to Industry Members, the

¹³¹ 15 U.S.C. 78f(b)(4).

¹³² 15 U.S.C. 78f(b)(8).

¹³³ See Section 6(b)(1) of the Exchange Act.

¹³⁴ CAT NMS Plan Approval Order at 84697.

Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees to be paid by the CEBBs and CEBSs are reasonable, equitably allocated and not unfairly discriminatory. First, the CAT Fee 2024-1 fees to be collected are directly associated with the budgeted costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs.

The proposed CAT Fee 2024-1 fees would be charged to Industry Members in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. The proposed fees would not cover Exchange services unrelated to the CAT. In addition, any surplus would be used as a reserve to offset future fees. Given the direct relationship between CAT fees and CAT costs, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

As further discussed below, the SEC approved the CAT Funding Model, finding it was reasonable and that it equitably allocates fees among Participants and Industry Members. The Exchange believes that the proposed fees adopted pursuant to the CAT Funding Model approved by the SEC are reasonable, equitably allocated and not unfairly discriminatory.

(1) Implementation of CAT Funding Model in CAT NMS Plan

Section 11.1(b) of the CAT NMS Plan states that “[t]he Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves.” Per Section 11.1(b) of the CAT NMS Plan, the Exchange has

filed this fee filing to implement the Industry Member CAT fees included in the CAT Funding Model. The Exchange believes that this proposal is consistent with the Exchange Act because it is consistent with, and implements, the CAT Funding Model in the CAT NMS Plan, and is designed to assist the Exchange and its Industry Members in meeting regulatory obligations pursuant to the CAT NMS Plan. In approving the CAT NMS Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”¹³⁵ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.¹³⁶ As this proposal implements the Plan and the CAT Funding Model described therein, and applies specific requirements to Industry Members in compliance with the Plan, the Exchange believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

(2) Calculation of Fee Rate for CAT Fee 2024-1 is Reasonable

The SEC has determined that the CAT Funding Model is reasonable and satisfies the requirements of the Exchange Act. Specifically, the SEC has concluded that the method for determining CAT Fees as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for CAT Fees, is reasonable and satisfies the Exchange Act.¹³⁷ In each respect, as discussed above, CAT Fee 2024-1 is calculated, and would be applied, in accordance with the requirements applicable to CAT Fees as set forth in the CAT NMS Plan.

¹³⁵ *Id.* at 84696.

¹³⁶ CAT Funding Model Approval Order at 62686.

¹³⁷ *Id.* at 62662-63.

Furthermore, as discussed below, the Exchange believes that each of the figures for the variables in the SEC-approved formula for calculating the fee rate for CAT Fee 2024-1 is reasonable and consistent with the Exchange Act. Calculation of Fee Rate 2024-1 for CAT Fee 2024-1 requires the figures for Budgeted CAT Costs 2024-1, the executed equivalent share volume for the prior twelve months, the determination of CAT Fee 2024-1 Period, and the projection of the executed equivalent share volume for CAT Fee 2024-1 Period. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Budgeted CAT Costs 2024-1

The formula for calculating a Fee Rate requires the amount of Budgeted CAT Costs to be recovered. Specifically, Section 11.3(a)(iii)(B) of the CAT NMS Plan requires a fee filing to provide:

The budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT fee filing.

In accordance with this requirement, the Exchange has set forth the amount and type of Budgeted CAT Costs 2024-1 for each of these categories above.

Section 11.3(a)(iii)(B) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.” As discussed below, the Exchange believes that the budget for the CAT Fee 2024-1 Period is “reasonable and appropriate.” Each of the costs included in CAT Fee 2024-1 are reasonable and appropriate because the costs are consistent with standard industry practice, based on the need to comply with the requirements of the CAT NMS

Plan, incurred subject to negotiations performed on an arm's length basis, and/or are consistent with the needs of any legal entity, particularly one with no employees.

(i) Technology: Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover budgeted costs related to cloud hosting services as a part of CAT Fees.¹³⁸ CAT LLC determined that the budgeted costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volumes far in excess of the original volume estimates, the need for specialized cloud services given the volume and unique nature of the CAT, the processing time requirements of the Plan, and regular efforts to seek to minimize costs where permissible under the Plan. CAT LLC determined that use of cloud hosting services is necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT, and that the fees for cloud hosting services negotiated by FCAT were reasonable, taking into consideration a variety of factors, including the expected volume of data and the breadth of services provided and market rates for similar services.¹³⁹ Indeed, the actual costs of the CAT are far in excess of the original estimated costs of the CAT due to various factors, including the higher volumes and greater complexity of the CAT than anticipated when Rule 613 was originally adopted.

To comply with the requirements of the Plan, the breadth of the cloud activities related to the CAT is substantial. The cloud services not only include the production environment for the CAT, but they also include two industry testing environments, support environments for quality assurance and stress testing and disaster recovery capabilities. Moreover, the cloud storage costs

¹³⁸ Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

¹³⁹ For a discussion of the amount and type of cloud hosting services fees, *see* Section 3(a)(2)(C)(i) above.

are driven by the requirements of the Plan, which requires the storage of multiple versions of the data, from the original submitted version of the data through various processing steps, to the final version of the data.

Data volume is a significant driver of costs for cloud hosting services. When the Commission adopted the CAT NMS Plan in 2016, it estimated that the CAT would need to receive 58 billion records per day¹⁴⁰ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.¹⁴¹ Through 2023, the actual data volumes have been five times that original estimate. The data volumes to date for 2024 have continued this trend.

In addition to the effect of the data volume on the cloud hosting costs, the processing timelines set forth in the Plan contribute to the cloud hosting costs. Although CAT LLC has proactively sought to manage cloud hosting costs while complying with the Plan, including through requests to the Commission for exemptive relief and amendments to the CAT NMS Plan, stringent CAT NMS Plan requirements do not allow for any material flexibility in cloud architecture design choices, processing timelines (*e.g.*, the use of non-peak processing windows), or lower-cost storage tiers. As a result, the required CAT processing timelines contribute to the cloud hosting costs of the CAT.

The costs for cloud hosting services also reflect the need for specialized cloud hosting services given the data volume and unique processing needs of the CAT. The data volume as well as the data processing needs of the CAT necessitate the use of cloud hosting services. The equipment, power and services required for an on-premises data model, the alternative to cloud hosting services, would be cost prohibitive. Moreover, as CAT was being developed, there were limited cloud hosting providers that could satisfy all the necessary CAT requirements, including

¹⁴⁰ Appendix D-4 of the CAT NMS Plan at n.262.

¹⁴¹ CAT NMS Plan Approval Order at 84801.

the operational and security criteria. Over time, more providers offering cloud hosting services that would satisfy these criteria have entered the market. CAT LLC will continue to evaluate alternative cloud hosting services, recognizing that the time and cost to move to an alternative cloud provider would be substantial.

The reasonableness of the cloud hosting services costs is further supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts (including regular efforts to lower compute and storage costs where permitted by the Plan) and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT’s costs and the level of fees assessed to support those costs.¹⁴²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to operating fees as a part of CAT Fees.¹⁴³ CAT LLC determined that the budgeted costs related to operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1.

The operating fees would include the negotiated fees paid by CAT LLC to the Plan Processor to operate and maintain the system for order-related information and to perform business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the selection of FCAT as the Plan Processor was reasonable and appropriate given its expertise with securities regulatory reporting, after a process of considering other potential candidates.¹⁴⁴ CAT LLC also

¹⁴² See Securities Exchange Act Rel. No. 97151 (Mar. 15, 2023), 88 Fed. Reg. 17086, 17117 (Mar. 21, 2023) (describing key cost discipline mechanisms for the CAT).

¹⁴³ Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

¹⁴⁴ See Section 3(a)(2)(C)(ii) above.

determined that the fixed price contract, negotiated on an arm's length basis with the goals of managing costs and receiving services required to comply with the CAT NMS Plan and Rule 613, was reasonable and appropriate, taking into consideration a variety of factors, including the breadth of services provided and market rates for similar types of activity.¹⁴⁵ The services to be performed by FCAT for CAT Fee 2024-1 Period and the budgeted costs related to such services are described above.¹⁴⁶

The operating costs also include costs related to the receipt of market data. CAT LLC anticipates continuing to receive certain market data from Exegy during the CAT Fee 2024-1 Period. CAT LLC anticipates that Exegy will continue to provide data that meets the SIP Data requirements of the CAT NMS Plan and that the fees are reasonable and in line with market rates for market data received.¹⁴⁷

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to CAIS operating fees as a part of CAT Fees.¹⁴⁸ CAT LLC determined that the budgeted costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. The CAIS operating fees would include the fees paid to the Plan Processor to operate and maintain CAIS and to perform the business operations related to the system, including compliance, security, testing, training, communications with the industry (*e.g.*, management of the FINRA CAT Helpdesk, FAQs, website and webinars) and program management. CAT LLC determined that the fees for FCAT's CAIS-related services, negotiated on an arm's length basis with the goals of

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

managing costs and receiving services required to comply with the CAT NMS Plan, taking into consideration a variety of factors, including the services to be provided and market rates for similar types of activity, are reasonable and appropriate.¹⁴⁹ The services to be performed by FCAT for the CAT Fee 2024-1 Period and the budgeted costs for such services are described above.¹⁵⁰

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to change request fees as a part of CAT Fees.¹⁵¹ CAT LLC determined that the budgeted costs related to change request fees described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is particularly true for a project like CAT that is the first of its kind, both in substance and in scale. The substance and costs of each of the change requests are evaluated by the Operating Committee and approved in accordance with the requirements for Operating Committee meetings. In each case, CAT LLC forecasts that the change requests will be necessary to implement the CAT. As described above,¹⁵² CAT LLC has included a reasonable placeholder budget amount for potential change requests that may arise during the CAT Fee 2024-1 Period. As noted above, the total budgeted costs for change requests during the CAT Fee 2024-1 Period represent a small percentage of Budgeted CAT Costs 2024-1—that is, approximately 0.12% of Budgeted CAT Costs 2024-1.

(v) Capitalized Developed Technology Costs

¹⁴⁹ See Section 3(a)(2)(C)(iii) above.

¹⁵⁰ *Id.*

¹⁵¹ Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

¹⁵² See Section 3(a)(2)(C)(iv) above.

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to capitalized developed technology costs as a part of CAT Fees.¹⁵³ In general, capitalized developed technology costs would include costs related to, for example, certain development costs, costs related to certain modifications, upgrades and other changes to the CAT, CAIS implementation fees and license fees. The amount and type of budgeted capitalized developed technology costs for the CAT Fee 2024-1 Period, which relate to the CAIS software license fee and technology changes to be implemented by FCAT, are described in more detail above.¹⁵⁴ CAT LLC determined that these budgeted costs are reasonable and should be included as a part of Budgeted CAT Costs 2024-1.

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted costs related to legal fees as a part of CAT Fees.¹⁵⁵ CAT LLC determined that the budgeted legal costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. Given the unique nature of the CAT, the number of parties involved with the CAT (including, for example, the SEC, Participants, Industry Members, and vendors) and the many regulatory, contractual and other issues associated with the CAT, the scope of the necessary legal services is substantial. CAT LLC determined that the scope of the proposed legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. CAT LLC determined to hire and continue to use each law firm based on a variety of factors, including their relevant expertise and fees. In each case, CAT LLC determined that the fee rates were in line with market rates for

¹⁵³ Section 11.3(a)(iii)(B)(B)(1) of the CAT NMS Plan.

¹⁵⁴ See Section 3(a)(2)(C)(v) above.

¹⁵⁵ Section 11.3(a)(iii)(B)(B)(2) of the CAT NMS Plan.

specialized legal expertise. In addition, CAT LLC determined that the budgeted costs for the legal projects were appropriate given the breadth of the services provided. The services to be performed by each law firm for the CAT Fee 2024-1 Period and the budgeted costs related to such services are described above.¹⁵⁶

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted consulting costs as a part of CAT Fees.¹⁵⁷ CAT LLC determined that the budgeted consulting costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. Because there are no CAT employees¹⁵⁸ and because of the significant number of issues associated with the CAT, the consultants are budgeted to provide assistance in the management of various CAT matters and the processes related to such matters.¹⁵⁹ CAT LLC determined the budgeted consulting costs were appropriate, as the consulting services were to be provided at reasonable market rates that were comparable to the rates charged by other consulting firms for similar work. Moreover, the total budgeted costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services budgeted to be performed by Deloitte and the budgeted costs related to such services are described above.¹⁶⁰

(viii) Insurance

¹⁵⁶ See Section 3(a)(2)(B)(vi) above.

¹⁵⁷ Section 11.3(b)(iii)(B)(B)(3) of the CAT NMS Plan.

¹⁵⁸ As stated in the filing of the proposed CAT NMS Plan, “[i]t is the intent of the Participants that the Company have no employees.” Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 Fed. Reg. 30614, 30621 (May 17, 2016).

¹⁵⁹ CAT LLC uses certain third parties to perform tasks that may be performed by administrators for other NMS Plans. See, e.g., CTA Plan and CQ Plan.

¹⁶⁰ Section 3(a)(2)(C)(vii) of the CAT NMS Plan.

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted insurance costs as a part of CAT Fees.¹⁶¹ CAT LLC determined that the budgeted insurance costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. CAT LLC determined that it is common practice to have directors' and officers' liability insurance, and errors and omissions liability insurance. CAT LLC further determined that it was important to have cyber security insurance given the nature of the CAT, and such a decision is consistent with the CAT NMS Plan, which states that the cyber incident response plan may include "[i]nsurance against security breaches."¹⁶² As discussed above,¹⁶³ CAT LLC determined that the budgeted insurance costs were appropriate given its prior experience with this market and an analysis of the alternative insurance offerings. Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.¹⁶⁴

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted professional and administration costs as a part of CAT Fees.¹⁶⁵ CAT LLC determined that the budgeted professional and administration costs described in this filing are reasonable and should be included as a part of Budgeted CAT Costs 2024-1. Because there are no CAT employees, all required accounting, financial, tax, cash management and treasury functions for CAT LLC have been outsourced at market rates. In addition, the required annual financial statement audit of CAT LLC is included in professional and administration costs, which

¹⁶¹ Section 11.3(b)(iii)(B)(B)(4) of the CAT NMS Plan.

¹⁶² Section 4.1.5 of Appendix D of the CAT NMS Plan.

¹⁶³ See Section 3(a)(2)(C)(viii) above.

¹⁶⁴ *Id.*

¹⁶⁵ Section 11.3(a)(iii)(B)(B)(5) of the CAT NMS Plan.

costs are also at market rates. The services performed by Anchin and Grant Thornton and the costs related to such services are described above.¹⁶⁶

CAT LLC anticipates continuing to make use of Anchin, a financial advisory firm, to assist with financial matters for the CAT. CAT LLC determined that the budgeted costs for Anchin were appropriate, as the financial advisory services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such financial advisory services were appropriate in light of the breadth of services provided by Anchin. The services budgeted to be performed by Anchin and the budgeted costs related to such services are described above.¹⁶⁷

CAT LLC anticipates continuing to make use of Grant Thornton, an independent accounting firm, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC determined that the budgeted costs for Grant Thornton were appropriate, as the accounting services were to be provided at reasonable market rates that were comparable to the rates charged by other such firms for similar work. Moreover, the total budgeted costs for such accounting services were appropriate in light of the breadth of services provided by Grant Thornton. The services budgeted to be performed by Grant Thornton and the budgeted costs related to such services are described above.¹⁶⁸

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted public relations costs as a part of CAT Fees.¹⁶⁹ CAT LLC determined that the budgeted public relations costs described in this filing are reasonable and should be included as a

¹⁶⁶ See Section 3(a)(2)(C)(ix) above.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Section 11.3(a)(iii)(B)(B)(6) of the CAT NMS Plan.

part of Budgeted CAT Costs 2024-1. CAT LLC determined that the types of public relations services to be utilized were beneficial to the CAT and market participants more generally. Public relations services are important for various reasons, including monitoring comments made by market participants about CAT and understanding issues related to the CAT discussed on the public record.¹⁷⁰ By continuing to engage a public relations firm, CAT LLC will be better positioned to understand and address CAT issues to the benefit of all market participants.¹⁷¹ Moreover, CAT LLC determined that the budgeted rates charged for such services were in line with market rates.¹⁷² As noted above, the total budgeted public relations costs for the CAT Fee 2024-1 Period represent a small percentage of Budgeted CAT Costs 2024-1—that is, approximately 0.03% of Budgeted CAT Costs 2024-1.

(xi) Reserve

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover budgeted reserve costs as a part of CAT Fees.¹⁷³ CAT LLC determined that the inclusion of a reserve in the amount of 25% of Budgeted CAT Costs 2024-1 complies with the requirements of the CAT NMS Plan related to a reserve, is a reasonable amount and should be included as a part of Budgeted CAT Costs 2024-1.

In its approval order for the CAT Funding Model, the Commission stated that it would be reasonable for the annual operating budget for the CAT to “include a reserve of not more than 25% of the annual budget.”¹⁷⁴ In making this statement, the Commission noted the following:

Because the CAT is a critical regulatory tool/system, the CAT needs to have a stable funding source to build financial stability to support the Company as a going concern. Funding for the CAT, as noted in Section 11.1(b), is the responsibility of

¹⁷⁰ See Section 3(a)(2)(C)(x) above.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Section 11.3(a)(iii)(B)(B) of the CAT NMS Plan.

¹⁷⁴ CAT Funding Model Approval Order at 62657.

the Participants and the industry. Because CAT fees are charged based on the budget, which is based on anticipated volume, it is reasonable to have a reserve on hand to prevent a shortfall in the event there is an unexpectedly high volume in a given year. A reserve would help to assure that the CAT has sufficient resources to cover costs should there be unanticipated costs or costs that are higher than expected.¹⁷⁵

The SEC also recognized that that a reserve would help address the difficulty in predicting certain variable CAT costs, like trading volume.¹⁷⁶ The SEC also recognized that CAT fees will be collected approximately three months after trading activity on which a CAT fee is based, or 25% of the year, and that the reserve would be available to address funding needs related to this three-month delay.¹⁷⁷ The inclusion of the proposed reserve in Budgeted CAT Costs 2024-1 would provide each of these benefits to the CAT. The reserve is discussed further above.¹⁷⁸

(B) Reconciliation of Budget to the Collected Fees

The CAT NMS Plan also requires fee filings for Prospective CAT Fees to include “a discussion of how the budget is reconciled to the collected fees.”¹⁷⁹ To date, CAT LLC has not collected any CAT fees. Accordingly, there are no collected fees to be reconciled with the budget.

(C) Total Executed Equivalent Share Volume for the Prior 12 Months

The total executed equivalent share volume of transactions in Eligible Securities for the period from June 2023 through May 2024 was 3,980,753,840,905.21 executed equivalent shares. CAT LLC determined the total executed equivalent share volume for the prior twelve months by

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *See* Section 3(a)(2)(C)(xi) above.

¹⁷⁹ Section 11.3(a)(iii)(B)(C) of the CAT NMS Plan.

counting executed equivalent shares in the same manner as it counts executed equivalent shares for CAT billing purposes.¹⁸⁰

(D) Projected Executed Equivalent Share Volume for the CAT Fee 2024-1 Period

CAT LLC has determined to calculate the projected total executed equivalent share volume for the four months in which CAT Fee 2024-1 Period would be payable by multiplying by 4/12ths (*i.e.*, one-third) the executed equivalent share volume for the prior 12 months.¹⁸¹

CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has remained relatively constant in recent years. For example, the executed equivalent share volume for 2021 was 3,963,697,612,395 executed equivalent shares, the executed equivalent share volume for 2022 was 4,039,821,841,560.31 executed equivalent shares, and the executed equivalent share volume for 2023 was 3,868,940,345,680.6.

Accordingly, the projected total executed equivalent share volume for the four-month period for CAT Fee 2024-1 is 1,326,917,946,968.403 executed equivalent shares.¹⁸²

(E) Actual Fee Rate for CAT Fee 2024-1

(i) Decimal Places

As noted in the approval order for the CAT Funding Model, as a practical matter, the fee filing for a CAT Fee would provide the exact fee per executed equivalent share to be paid for each CAT Fee, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.¹⁸³ Accordingly, proposed paragraph (a)(3)(B) of the fee schedule

¹⁸⁰ See Section 3(a)(2)(D) above.

¹⁸¹ *Id.*

¹⁸² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by 4/12ths.

¹⁸³ CAT Funding Model Approval Order at 62658, n.658.

would set forth a fee rate of \$0.000035 per executed equivalent share. This fee rate is calculated by multiplying Fee Rate 2024-1 by one-third and rounding the result to six decimal places. CAT LLC determined that the use of six decimal places is reasonable as it balances the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.¹⁸⁴

(ii) Reasonable Fee Level

The Exchange believes that imposing CAT Fee 2024-1 with a fee rate of \$0.000035 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Budgeted CAT Costs 2024-1 and such budgeted costs would be spread out over a four-month period. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, CAT Fee 2024-1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),¹⁸⁵ and, as a result, the magnitude of CAT Fee 2024-1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.¹⁸⁶

(3) CAT Fee 2024-1 Provides for an Equitable Allocation of Fees

CAT Fee 2024-1 provides for an equitable allocation of fees, as it equitably allocates CAT costs between and among the Participants and Industry Members. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the

¹⁸⁴ See Section 3(a)(4)(A) above.

¹⁸⁵ *Id.* at 62663, 62682. In explaining the comparison of Section 31 fees to CAT fees in the CAT Funding Model Approval Order, the SEC noted that “Section 31 fees are expressed per dollar volume traded. Translating this to a per share range involves identifying reasonable high and low trade sizes. The lower end of this range comes from the 25th percentile in \$ trade size of 1,200 and share trade size of 71 from the first quarter of 2021. The higher end of this range comes from the 75th percentile in \$ trade size of 5,200 and share trade size of 300 from the first quarter of 2021. Section 31 fees have ranged from \$5.10 per \$Million to \$23.10 per \$Million from Oct. 1, 2016 to Mar. 1, 2023.” *Id.* at 62682., n.1100. In 2024, Section 31 fees were raised further to \$27.80 per million dollars.

¹⁸⁶ *Id.*

requirements of the Exchange Act, including the formula for calculating CAT Fees as well as the Industry Members to be charged the CAT Fees.¹⁸⁷ In approving the CAT Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”¹⁸⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Budgeted CAT Costs among Participants and Industry Members, and the fee filings for CAT Fees must comply with those requirements.

CAT Fee 2024-1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. For example, as described above, the calculation of CAT Fee 2024-1 complies with the formula set forth in Section 11.3(a) of the CAT NMS Plan. In addition, CAT Fee 2024-1 would be charged to CEBBs and CEBSs in accordance with Section 11.3(a) of the CAT NMS Plan. Furthermore, the Participants would be charged for their designated share of Budgeted CAT Costs 2024-1 through a fee implemented via the CAT NMS Plan, which would have the same fee rate as CAT Fee 2024-1.

In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2024-1—Budgeted CAT Costs 2024-1, the count for the executed equivalent share volume for the prior 12 months, and the projected executed equivalent share volume for the CAT Fee 2024-1 Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for CAT Fee 2024-1 that is lower than other fee rates for transaction-based fees. A reasonable fee rate allocated in accordance with the requirements of the CAT Funding Model provides for an equitable allocation of fees.

(4) CAT Fee 2024-1 is Not Unfairly Discriminatory

¹⁸⁷ See Section 11.3(b) of the CAT NMS Plan.

¹⁸⁸ CAT Funding Model Approval Order at 62629.

CAT Fee 2024-1 is not an unfairly discriminatory fee. The SEC approved the CAT Funding Model, finding that each aspect of the CAT Funding Model satisfied the requirements of the Exchange Act. In reaching this conclusion, the SEC analyzed the potential effect of CAT Fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. CAT Fee 2024-1 complies with the requirements regarding the calculation of CAT Fees as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of CAT Fee 2024-1 and the resulting fee rate for CAT Fee 2024-1 is reasonable. Therefore, CAT Fee 2024-1 does not impose an unfairly discriminatory fee on Industry Members.

The Exchange believes the proposed fees established pursuant to the CAT Funding Model promote just and equitable principles of trade, and, in general, protect investors and the public interest, and are provided in a transparent manner and with specificity in the fee schedule. The Exchange also believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fee based on fixed rate per executed equivalent share. Such factors are crucial to estimating a reliable revenue stream for CAT LLC and for permitting Exchange members to reasonably predict their payment obligations for budgeting purposes.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 6(b)(8) of the Act¹⁸⁹ requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that CAT Fee 2024-1 implements provisions of the CAT NMS Plan that were approved by the Commission and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan.

In addition, all Participants (including exchanges and FINRA) are proposing to introduce CAT Fee 2024-1 on behalf of CAT LLC to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing, and, therefore, it does not raise competition issues between and among the Participants.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.¹⁹⁰ The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things. Based on this analysis, the SEC approved the CAT Funding Model as compliant with the

¹⁸⁹ 15 U.S.C. 78f(b)(8).

¹⁹⁰ CAT Funding Model Approval Order at 62676-86.

Exchange Act. CAT Fee 2024-1 is calculated and implemented in accordance with the CAT Funding Model as approved by the SEC.

As discussed above, each of the inputs into the calculation of CAT Fee 2024-1 is reasonable and the resulting fee rate for CAT Fee 2024-1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, CAT Fee 2024-1 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act¹⁹¹ and Rule 19b-4(f)(2) thereunder,¹⁹² because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁹² 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2024-29 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-GEMX-2024-29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-GEMX-2024-29 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹³

Sherry R. Haywood,

Assistant Secretary.

¹⁹³ 17 CFR 200.30-3(a)(12).